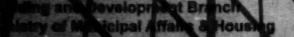
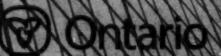
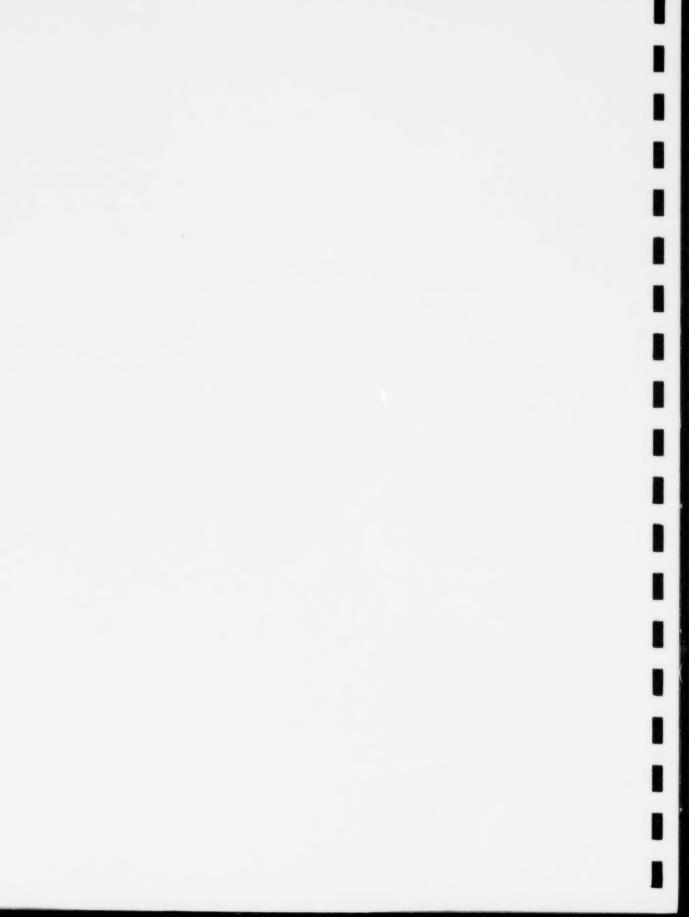


2006

Participant's Manual





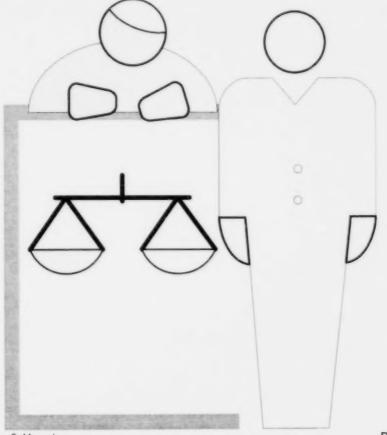


PARTICIPANT MANUAL

GENERAL LEGAL/PROCESS FOR INSPECTORS and DESIGNERS, POWERS and DUTIES for CBOs, and RCAs

- 2006

Building Code Act 1992, S.O. 1992, C.23 as amended to January 1, 2007 O.Rg 350/06 as amended to April 2, 2007



Ministry of Municipal Affairs & Housing Building and Development Branch (Revision 8) Rev. Jul 07

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OBJECTIVES of Module Thirteen -B-
POWERS AND DUTIES UNDER THE BCA THAT CAN BE EXERCISED BY EITHER THE CBO OR THE RCA HAVING JURISDICTION authority to refer plans to PEO and OAA authority to allow changes to permit information authority to receive notices of readiness for inspections and authority to carry out inspections authority to allow the occupancy or use of an unfinished building authority to make an Order To Uncover authority to make a Stop Work Order and determine its recipients authority to authorize the removal of a posted order authority to apply to the Building Code Commission to resolve a dispute
OTHER SIMILARITIES BETWEEN A PRINCIPAL AUTHORITY AND A REGISTERED CODE AGENCY 5 decisions and orders may be appealed by the aggrieved

MODULE THIRTEEN -C- POWERS AND DUTIES OF THE RCA

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MODULE ONE - INTRODUCTION AND INSTRUCTIONS

Facilitator/Self-Study
Participant Note: Margin
notes will be provided. You
are asked to enhance the
Table of Contents of the
BCA and the Index of the
OBC and to enhance the
cross-references between
the BCA and the OBC.

READ ME FIRST INSTRUCTIONS

BEFORE THE COURSE STARTS, WORK ON YOUR OWN AND COMPLETE ALL OF THE EXERCISES. If you come unprepared, you will have a difficult time to keep up with the pace of instruction. To be ready for this course, you will need to schedule and dedicate 35 to 40 hours of your time as preparation time.

It is recommended that you familiarize yourself with the **TABLE OF CONTENTS** of the *Building Code Act* (BCA or Act) and those of Divisions A and C of the 2006 Building Code (OBC or Code or building code). As you consult the text of the BCA and the associated text of the OBC, you are strongly encouraged to customize your copy of each document by inserting cross-references in the margins to establish concordance between the requirements of the BCA and the prescribed provisions of the building code. For example, in your copy of the BCA underline the term "any other applicable law" at Clause 8.-(2)(a) and in the margin, write "Div. A, 1.4.1.3.(1)".

COURSE OBJECTIVE

The objective of the course, "General Legal/Process for Inspectors and Designers, Powers and Duties for Chief Building Officials and Registered Code Agencies" is to help you understand how the BCA works and its relationship with both the building code made by the Lieutenant Governor in Council under Section 34 of the BCA and the instrument (Building By-law, Building Regulation or Building Resolution) enacted by a Principal Authority under Section 7 of the Act.

Because of recent amendments to the BCA by Bill 124, "An Act to improve public safety and to increase efficiency in building code enforcement"; and by Bill 190, "An Act to promote good government by amending or repealing certain Acts and by enacting one new Act"; and, the release of the 2006 Objective-Based Building Code and their effect on the Building By-law, Regulation or Resolution of the Principal Authority, this course is of significance to BCA practitioners that want to have the qualifications set out in Part 3 of Division C of the building code.

COURSE FORMAT

This course has thirteen Modules. Modules One to Twelve are intended for all BCA practitioners who are required by Subsections 15.11-(1) to (5) of the BCA to have the qualifications set out in Part 3 of Division C of the building code. The three parts of Module Thirteen are intended for Chief Building Officials, Inspectors who have the same powers and duties as the Chief Building Official in relation to sewage systems or plumbing, Inspectors who are Supervisors and Managers of Inspectors and Registered Code Agencies.

A REMINDER - BEFORE THE COURSE STARTS

YOU ARE ASKED TO WORK ON YOUR OWN AND COMPLETE ALL OF THE EXERCISES. (The **STOP** signs have significance only during the delivery of the course by a facilitator.)

As you work on your own, if you encounter some information that you do not understand, simply set that task aside and proceed with the remainder of the course material. The time in class should be sufficient to deal with your temporary set-back. On the other hand if you come to the course unprepared, you will have trouble keeping up with the pace of instruction. Remember, success is 90% perspiration and 10% inspiration.

THE PURPOSE OF THE EXERCISES

Every module contains a number of exercises. Each exercise is designed to help you to either find, understand or apply the legal requirements of the BCA, the building code or both and the effect of the requirement on the building regulatory system in Ontario. The exercises contain questions of the multiple-choice type, fill-inthe-blank or use your own words to provide an answer. You will also be asked to complete charts and tables which can later be used as job aids in exercising powers and performing duties under the BCA. Most times, you will be asked to support your answer with references to the BCA or the building code or both. Pay attention to the detail of the BCA references. e.g., Subsection 3.-(2) is the authority and duty of council "to appoint a CBO and such Inspectors as are necessary ..." On the other hand, Subsection 3.1-(2) is the authority and duty of a prescribed board of health "to appoint such Sewage System Inspectors as are necessary ..."

For ease of reference and to avoid confusion you are encouraged to write in the appropriate Section number in front of each Subsection in your copy of the Act. For example, in Section 3.1-you may wish to write 3.1- in front of Subsections (2) to (7). You would repeat the process for every Section of the BCA.

You may wish to rewrite the **Table of Contents** of the BCA by providing a heading for every Subsection as follows:

1.1- ROLES

1.1-(1) Role of Various Persons,

1.1-(2) Role of Designers,

etc ...

You may also wish to use coloured flags to tab a specific Section of the BCA, such as Section 28 Building Materials Evaluation Commission (BMEC).

In other words, you are encouraged to use any system which will assist you in finding and cross-referencing the information of the BCA with the text of the building code. The identification of cross-references between the BCA and the OBC is especially important when the BCA contains terms like "specified by Regulation", "set out in the building code" or "prescribed".

Facilitator/Self-Study
Participant Note: In
Subsection 8.-(1.1) of the
BCA, underline a person
specified by regulation and
write "Div. C. 1.3.1.2.(1)"

For example, Subsection 8.-(1.1) of the BCA states in part: "An application for a permit to construct or demolish a building may be made by a person specified by regulation..."

The difficulty in associating a requirement of the BCA with a provision of the building code is that there is no ready-made cross-reference provided. In this case, Subsection 8.-(1.1) of the BCA is associated with Div. C, Sentence 1.3.1.2.(1) of the Code. The Sentence inform us that:

"An application for a permit under Section 8 of the *Act* to construct or demolish a building must be made by:

(a) the owner of the property on which the proposed construction or demolition is to take place,

or

(b) the authorized agent of the owner referred to in Clause (a)."

When reference is provided to specific parts of the BCA or the building code in the preamble to an exercise or the stem of a question, you are encouraged to review the referenced information **before** attempting to complete the exercise or providing an answer to the question.

COURSE RESOURCES

Your participation, with support from the Facilitator, the BCA, the building code and the experience, ideas and comments of your fellow participants are the primary resources of this course. The objective of the course integrates your education, prior training and on-the-job experience as well as those of your peers. It is important that you participate. For each question or task that is assigned to your table-group, you will select a spokesperson who will print the agreed-upon answer on the flipchart or the overhead transparency provided by the Facilitator. When asked by the Facilitator, the spokesperson will explain the group's answer, which will form the basis for class discussion.

In preparation for the course, you will need to print or acquire a number of documents as reference material.

- From the Building Code Website at http://www.ontario.ca/buildingcode
 print the following documents.
 - a) Left click on "Qualification and Registration", scroll down the menu and left click on the heading "Building Officials", "Designers", "On Site Sewage Installers" or "Registered Code Agency" as the case may be. Scroll down the menu and left click on "Examination Syllabi", and print the document entitled "Building Code Act and Building Code Qualification Examination Syllabi".
 - b) Left click on "Qualification and Registration", scroll down the menu and left click on the heading "Building Officials", "Designers", "On Site Sewage Installers" or "Registered Code Agency" as the case may be.

Scroll down the menu and left click on "Examination Program", and print the document entitled "Policies and Procedures Examination Program for ... (under the Building Code Act, 1992 and the Ontario Building Code)".

- c) Left click on "Publications" scroll down the menu and left click on "Permit Application Order Forms and RCA Certificates", left click "Common Building Permit Application Form"and print. Left click on the back button and left click on "Prescribed Orders" retrieve and print Order to Comply, Order Not to Cover or Enclose, Order to Uncover, Stop Work Order and Order Requiring Tests and Samples. Left click on the back button and left click "Registered Code Agency Certificates" retrieve and print the Plans Review, Change, Occupancy and Final Certificate.
- d) Left click on "Appeals and Approvals", scroll down the menu and left click on the heading "BCC". Scroll down the menu and left click on "2003". Scroll down the menu and left click on "BCC Ruling No. 02-31-886", and print the document.
- e) Left click on "Appeals and Approvals", scroll down the menu and left click on the heading "BMEC". Scroll down the menu and under the heading "Authorization Number", left click on "BMEC 02-08-279", and print the document.
- f) Left click on "Appeals and Approvals", scroll down the menu and left click on the heading "Minister's Rulings". Scroll down the menu and under the heading "Ruling Number", left click on "MR01-03-087-(12981-R)", and print the document.
- From the Canadian Construction Materials Centre Website at www.nrc.ca/ccmc
 - a) Left click on "English", scroll down the menu and in the left hand column, left click on the heading "Registry of Product Evaluations". Scroll down to the **Query Box** and left click in the blank query box. Type 12981-R in the query box and press "enter key" or left click on "search button". Scroll down and left click on title to the right of 1. and print the Evaluation Report. Left click on the Back button and using the same directions, print CCMC Evaluation Report № 12884-R.

- 3. From the Canadian Legal Institute Website at www.canlii.ca/ In line <a href="www.canlii.ca
- 4. From Publications Ontario, to obtain information about purchasing a copy of the *Building Code Act* and Ontario's 2006 Objective-Based Building Code as referenced in a) and b) below, consult the Building Code Website; and, left click on Publications, scroll down the menu and left click on "Purchase Copies of Ontario's Building Code".
 - a) the *Building Code Act*, S.O. 1992, c. 23 as amended to June 22, 2006 by:
 - S.O. 1997, c.24, s. 224, except s. 224(17), proclaimed in force June 17, 1998.
 - S.O. 1997, c.30, Schedule B, s. 1-20 proclaimed in force April 6, 1998,
 - S.O. 1999, c.12, Schedule M, s. 1-11 in force December 22, 1999,
 - S.O. 2000, c.5, s. 7 in force January 1, 2001,
 - S.O. 2000, c.26, Schedule K, s. 1 in force December 6, 2000,
 - S.O. 2002, c.9, s. 5, 6(1), (2), 16, 24, 25, 27, 31(1), 34, 41(1), 43, 51(6),
 (9), (11)-(15), 53(3), 54, in force September 1, 2003,
 - S.O. 2002, c.9, s.1-4, 6(3), 7-15, 17-19, 20(1), (2), 21-23, 26, 28-30, 31(2), 32, 33, 35-39, 40(2), (3), 41(2), 42, 44-50, 51(1), (2), (4), (5), (7), (8), (10), 52, 53(1), (2) in force July 1, 2005,
 - S.O. 2002, c.17, Schedule C, s. 1-6, in force July 1, 2005,
 - S.O. 2002, c. 17, Schedule F, in force January 1, 2003,
 - S.O. 2005, c. 33 in force December 15, 2005,
 - S.O. 2006, c. 19, Schedule O, ss. 1, 2 in force June 22, 2006; and,
 - S.O. 2006, c. 32, Schedule C, s. 3, in force January 1, 2007.
 - b) Ontario's 2006 Objective-Based Building Code, Ontario Regulations 350/06 in force December 31, 2006 and as amended to April 2, 2007 by:
 - O. Reg. 423/06, in force December 31, 2006,
 - r. O. Reg. 137/07, in force April 2, 2007.
 - m, Minister's Ruling MR-07-S-02, in force March 9, 2007,
 - m₂ Minister's Ruling MR-07-S-03, in force April 2, 2007; and,
 - r., O. Reg. 137/07, in force July 1, 2007.

- Alternatively, the copies of the Building Code Act and Ontario's 2006 Building Code may be downloaded from the e-Laws website at www.e-laws.gov.on.ca. This is a joint project of the Ministry of Consumer and Business Services and the Ministry of the Attorney General.
 - a) To print the Building Code Act, left click "English". Scroll down the menu and left click "CURRENT CONSOLIDATED LAW" Left click on the letter B. Scroll down the menu and left click "Building Code Act, 1992, S.O. 1992, c.23" and print the document. After you are done, left click the back button of your browser and follow the instructions in 5. b).
 - b) To print the building code, O. Reg. 350/06, as amended, left click on the + sign to the left of "Building Code Act, 1992, c. 23". There are five volumes to be selected and printed, O. Reg. 350/06 (1 of 5) BUILDING CODE to O. Reg. 350/06 (5 of 5) BUILDING CODE.

During the delivery of the course, you will be prompted to refer to the material you have printed or purchased.

EXERCISE # 1 - WHO'S WHO AND FROM WHERE

During the next five minutes or so, the participants will take turns to introduce themselves to the other members of their table-group by stating their name, title, employer and years of experience as a BCA practitioner.

As the case may be, report on the type of orders you have made or received, types of building inspected, any court case you were involved with and whatever you feel is noteworthy. Afterwards, the Facilitator will ask each participant to do the same for the benefit of the members of the class.

Module One -	INTRODI	JCTION AND	INSTRUCTIONS	•	Page 8
	Name	Title	Employer	Experience wi Court Cases, etc.	
Self-Study Participant					
Note: To save time during the course, jot down the					
main points of your introduction as you are					
preparing to take this course.					
	STOP				
	Sid				
	EXERC	ISE # 2 - M	EET THE FACIL	ITATOR	
			en introduced to a		
Self-Study Participant Note: While working on your own, skip Exercise #2. It will be completed during	for the minutes own exp	Facilitator to h, he/she will p perience in d	introduce him/he provide you with a flealing with the B	rself. Over the humbnail sketch	next few of his/he ly on the

the delivery of the course.

assistance of the Facilitator as the need arises during the delivery of this course.



What I expect to learn from this course

EXERCISE #3 - STATEMENT OF PERSONAL EXPECTATIONS

Each of you comes to this course with certain skills and knowledge that you can share with your classmates along with expectations to enhance your proficiency in understanding the BCA and the administrative provisions of the building code.

Consult the course Table of Contents at the front of your participant's manual and in the space provided, identify what you expect to learn from this course. Compare your expectations with those of the other members of your table-group. During the class discussions, the Facilitator will ask each table-group to share common expectations with the remainder of the class, the Facilitator will note them on the flipchart.

At the end of the course, you will be able to return to this exercise and verify if your expectations were met.

at respect to learn from this course.						
		· · · · · · · · · · · · · · · · · · ·				

Wha	at others	expect f	rom this	course	which I fo	ound note	eworthy:
				-:			

STOP

While the information that follows will not form part of the qualification examinations it falls within the realm of things you need to know as a BCA practitioner. Before we examine the structure of the BCA and the building code, we need to examine the effect of the *Legislation Act* on all of the Statutes of Ontario. Only those parts of the *Interpretation Act*, that are relevant to the BCA were extracted.

Facilitator/Self-Study
Participant Note: All of the
Statutes and Regulations of
Ontario may be
downloaded from the
e-Laws website

www.e-laws.gov.on.ca. a joint project of the Ministry of Consumer and Business Services and the Ministry of the Attorney General.

EXTRACTS FROM THE LEGISLATION ACT, 2006

NOTA BENE:

On July 25, 2007 the Legislation Act, 2006, S.O. 2006, c. 21, Sched. F was proclaimed to come into force. It assembles in one Act, provisions about the publication, citation and interpretation of Ontario legislation. For a brief explanation of the nine parts of the Act, consult Schedule F at the following link.

http://www.e-laws.gov.on.ca/DBLaws/Source/ExplanatoryNotes/ English/2006/exS06021_e.htm

PART I GENERAL

Definitions

- "consolidated law" means a source law into which are incorporated,
 - (a) amendments, if any, that are enacted by the Legislature or filed with the Registrar of Regulations under Part III or under a predecessor of that Part, and

- (b) changes, if any, made under Part V;
- 1.(1) "e-Laws website" means the website of the Government of Ontario for statutes, regulations and related materials that is available on the Internet at www.e-laws.gov.on.ca
- 1.(1) "legislation" means Acts and regulations
- 1.(1) "source law" means,
 - in the case of an Act, the Act as enacted by the Legislature, and
 - (b) in the case of a regulation, the regulation as filed with the Registrar of Regulations under Part III or under a predecessor of that Part.

PART II STATUTES

Citation of Acts

- 5.(1) An Act may be cited,
 - (a) by its long or short title;
 - (b) in English as "Statutes of Ontario" or S.O. and in French as "Lois de l'Ontario" or "L.O.", followed by its year of enactment and its chapter number.
- 5.(2) An Act set out in the Revised Statutes of Ontario may be cited in English as "Revised Statutes of Ontario, (year)" or "R.S.O. (year)" and in French as "Lois refondues de l'Ontario de (year)" or "L.R.O. (year)", followed by its chapter number.

Commencement of Acts

- Unless otherwise provided, an Act comes into force on the day it receives Royal Assent.
- 8.(2) Commencement and short title provisions in an Act and the long title of the Act are deemed to come into force on the day the Act receives Royal Assent, regardless of when the Act is specified to come into force.

Selective proclamation

8.(3) If an Act provides that it is to come into force on a day to be named by proclamation, proclamations may be issued at different times for different parts, portions or sections of the Act.

Time of commencement and repeal Commencement

9.(1) Unless otherwise provided, an Act comes into force at the first instant of the day on which it comes into force.

Limitation

- 9.(2) Unless otherwise provided, an Act that comes into force on Royal Assent is not effective against a person before the earlier of the following times:
 - 1. When the person has actual notice of it.
 - 2. The last instant of the day on which it comes into force.

Endorsements on Acts

- 11.(1) The Clerk of the Assembly shall indicate on every Act, after the title, the date on which it receives Royal Assent.
- 11.(2) The date of assent forms part of the Act.

Copies for publication

14. The Clerk of the Assembly shall provide a certified copy of each Act of the Legislature, as soon as it has been assented to, for the purpose of publication on the e-Laws website and print publication.

Publication

Every Act of the Legislature shall be published on the e-Laws website and in print.

PART III REGULATIONS

NOTA BENE:

The Ontario Building Code is a regulation, see Subsection 1.-(1) of the Building Code Act

Definition

17. "Regulation" means a regulation, rule, order or by-law of a legislative nature made or approved under an Act of the Legislature by the Lieutenant Governor in Council, a minister of the Crown, an official of the government or a board or commission all the members of which are appointed by the Lieutenant Governor in Council, but does not include.

- (a) a by-law of a municipality or local board as defined in the *Municipal Affairs Act*, or
- (b) an order of the Ontario Municipal Board.

Filing of Regulations

18.(1) Every regulation shall be filed with the Registrar, except as provided in sections 19 to 21.

NOTA BENE: In these extracts, we will not deal with the exceptions.

When regulation effective

- 22.(1) A regulation that is not filed has no effect.
- 22.(2) Unless otherwise provided in a regulation or in the Act under which the regulation is made, a regulation comes into force on the day on which it is filed.

NOTA BENE:

As a general rule, the rules for transition, revocation and commencement of the building code regulation are found in Part 4 of Division C.

As an exception to the general rule, sometimes the implementation date is found in the text of a building code provision. For example, see Sentences 12.2.1.1.(1) and 12.2.1.2.(1) in the case of energy efficiency design and 12.3.2.4.(1) and 12.3.2.4.(3) in the case of insulation of foundation walls of Part 9 buildings intended for occupancy on a continuing basis during the winter months.

No retroactivity authorized

22.(3) Nothing in this section authorizes the making of a regulation that is effective with respect to a period before its filing.

Time of commencement and revocation Commencement

23.(1) Unless otherwise provided in a regulation or in the Act under which a regulation is made, a regulation comes into force at the first instant of the day on which it comes into force.

Limitation

- 23.(2) Unless otherwise provided in a regulation or in the Act under which the regulation is made, a regulation is not effective against a person before the earliest of the following times:
 - 1. When the person has actual notice of it.
 - 2. The last instant of the day on which it is published on the e-Laws website.
 - 3. The last instant of the day on which it is published in the print version of *The Ontario Gazette*.

Revocation

23.(3) Unless a regulation or an Act provides otherwise, the revocation of a regulation takes effect at the first instant of the day of revocation.

Proof of making, approval, filing and publication When made

24.(1) Unless the contrary is proved, the date indicated on the e-Laws website or in the print version of *The Ontario Gazette* as the date on which a regulation was made is proof that the regulation was made on that date.

When approved

24.(2) Unless the contrary is proved, if approval is required for the making of a regulation, the date indicated on the e-Laws website or in the print version of *The Ontario Gazette* as the date on which approval was given is proof that the regulation was approved on that date.

When filed

24.(3) Unless the contrary is proved, the date indicated on the e-Laws website or in the print version of *The Ontario Gazette* as the date on which a regulation was filed is proof that the regulation was filed on that date.

When published on e-Laws

24.(4) Unless the contrary is proved, the date of publication indicated for a regulation on the e-Laws website is proof that the regulation was published on the e-Laws website on that date.

When published in The Ontario Gazette

24.(5) Unless the contrary is proved, the date of publication indicated for a regulation in the print version of *The Ontario Gazette* is proof that the regulation was published in the print version of *The Ontario Gazette* on that date.

When published

- 25.(1) Every regulation shall be published,
 - (a) on the e-Laws website promptly after its filing; and
 - (b) in the print version of *The Ontario Gazette* within one month after its filing or in accordance with such other timelines as may be specified in a regulation made under clause 32(c).

Date of filing, publication, etc.

25.(2) A published regulation shall show the date of its filing, the date of its publication on the e-Laws website and the date of its publication in the print version of *The Ontario Gazette*, in the manner directed by the Registrar.

Publication in order of filing

25.(3) Regulations shall be published in the order in which they are filed unless, in the opinion of the Registrar, for practical or technical reasons related to the publication process, it is impossible, impractical or unreasonably difficult or costly to do so.

Numbering

25.(4) Regulations shall be numbered in the order in which they are filed, and a new series shall be commenced each year.

No validation

 The filing, publication or correction of a regulation under this Act does not validate the regulation if it is otherwise invalid.

Citation of regulations

- 30.(1) A regulation may be cited in English as "Ontario Regulation" or "O. Reg." and in French as "Règlement de l'Ontario" or "Règl. de l"Ont." followed by its filing number, a forward slash and the year of its filing.
- 30.(2) The year of filing of a regulation may be indicated in full or by the last two figures in the year.
- 30.(3) A regulation set out in the Revised Regulations of Ontario may be cited,
 - (a) in English as "Revised Regulations of Ontario, (year), Regulation (number) or as "R.R.O. (year), Reg. (number)"; and
 - (b) In French as "Règlements refondus de l'Ontario de (year), Règlement (number) or as "R.R.O. (year), Règl. (number)".

PART IV PROOF OF LEGISLATION

Official law

34.(1) A bill that receives Royal Assent and is endorsed by the Clerk of the Assembly as having received Royal Assent is official law. 34.(2) A regulation that is filed with the Registrar of Regulation under Part III (Regulations) or a predecessor of that Part is official law.

Official copy

- 35.(1) A copy of a source law or a consolidated law is an official copy of that law if,
 - it is printed by the Queen's Printer or by an entity that is prescribed under clause 41(1)(a);
 - it is accessed from the e-Laws website in a form or format prescribed under clause 41(1)(b); or
 - (c) it is prescribed under clause 41(1)(c) as an official copy.

Disclaimer

- 35.(2) Subsection (1) does not apply to a copy that is accompanied by a disclaimer to the effect that it is not intended as official.
- 35.(3) In the case of a copy referred to in clause (1)(b), the copy is accompanied by a disclaimer if the disclaimer is on the e-Laws website when the copy is accessed.

Presumption, printed by Queen's Printer

 Unless the contrary is proved, a copy of a source law or consolidated law purporting to be printed by the Queen's Printer or other prescribed entity was so printed.

Presumption, accessed from e-Laws

 Unless the contrary is proved, a copy of a source law or consolidated law submitted with an oral or written statement to the effect that it was accessed from the e-Laws website in a form or format prescribed under clause 41(1)(b).

Official copies of source law as evidence

38. Unless the contrary is proved, an official copy of a source law is an accurate statement of that law.

Official copies of consolidated law as evidence

- Unless the contrary is proved, an official copy of a consolidated law is an accurate statement of that law.
 - in the case of an official copy described in clause 35(1)(a), on the consolidation date shown on the copy;
 - (b) in the case of an official copy accessed from the e-Laws website in a form or format prescribed under clause 41(1)(b), during the period indicated on the e-Laws website in respect of the copy when the copy is accessed;
 - (c) in the case of an official copy prescribed under clause 41(1)(c), on the date or during the period prescribed under clause 41(1)(d).

e-Laws, provisions not in force

- 40.(1) A source law or consolidated law published on the e-Laws website shall include provisions that have been enacted by the Legislature or filed under Part III (Regulations) or a predecessor of that Part, as the case may be, but that are not yet in force.
- 40.(2) Where a provision that is not yet in force is included in a law published on the e-Laws website, the fact that it is not yet in force shall be indicated on the website, in the manner and to the extent directed by the Chief Legislative Counsel.

Regulations

- 41.(1) The Attorney General may make regulations,
 - (a) prescribing an entity for the purposes of clause 35(1)(a);
 - (b) prescribing forms or formats, including print-outs, on-screen displays or other output of electronic data, for the purposes of clause 35(1)(b);
 - (c) prescribing officials copies for the purposes of clause 35(1)(c);
 - (d) prescribing the date on or period during which a copy prescribed under clause (c) is an accurate

statement of a consolidated law.

- 41.(2) A regulation made under clause (1)(b), (c) or (d) may be made with respect to,
 - the manner in which a copy is created, recorded, transmitted, stored, authenticated, received, displayed or perceived;
 - (b) the person, body or thing that created, recorded, transmitted, stored, authenticated, received, displayed or perceived the copy, and
 - (c) any statement, mark or certification associated with the creation, recording, transmission, storage, authentication, reception, display or perception of the copy.

NOTA BENE: The provisions of Part V, Change Powers will not be extracted because they apply to the Chief Legislative Counsel

PART VI INTERPRETATION Application to Acts and Regulations

46. Every provision of this Part applies to every Act and regulation.

Contrary intention or context requiring otherwise

- 47. Section 46 applies unless,
 - (a) a contrary intention appears; or
 - (b) its application would give a term or provision a meaning that is inconsistent with the context.

Existing and future legislation

48. Section 46 applies whether the Act or regulation was enacted or made before, on or after the day the Access to Justice Act, 2006 receives Royal Assent.

NOTA BENE: The Access to Justice Act, 2006 received Royal Assent on October 19, 2006. The Legislation Act, 2006, under Schedule F of the Access to Justice Act, 2006, was proclaimed to come into force on July 25, 2007.

Other documents

- 49. The following provisions also apply, in the same way as to a regulation, to every document that is made under an Act but is not a regulation:
 - 1. Subsection 52(6) (regulation continues).
 - Section 54 (regulations power to make, amend, etc.).
 - 3. Section 58 (reference to Act or regulation includes reference to individual provisions).
 - 4. Section 59 (rolling incorporation of Ontario legislation), but only with respect to the document that contains the reference.
 - 5. Section 86 (terms used in regulations).
 - 6. Section 89 (computation of time).

Interpretation and definition provisions

 The interpretation and definition provisions in every Act and regulation are subject to the exceptions contained in section 47.

LEGISLATIVE CHANGES

Effect of repeal and revocation

- 51.(1) The repeal of an Act or the revocation of a regulation does not.
 - affect the previous operation of the repealed or revoked Act or regulation;
 - affect a right, privilege, obligation or liability7 that came into existence under the repealed or revoked Act or regulation;
 - (c) affect an offence committed against the repealed or revoked Act or regulation, or any penalty, forfeiture or punishment incurred in connection with the offence;
 - (d) affect an investigation, proceeding or remedy in respect of,
 - (i) a right, privilege, obligation or liability described in clause (b), or
 - (ii) a penalty, forfeiture or punishment described in clause (c).

- 51.(2) An investigation, proceeding or remedy described in clause (1)(d) may be commenced, continued and enforced as if the Act or regulation had not been repealed or revoked.
- 51.(3) A penalty, forfeiture or punishment described in clause (1)(c) may be imposed as if the Act or regulation had not been repealed or revoked.

Effect of amendment and replacement Application

- 52.(1) This section applies,
 - (a) if an Act is repealed and replaced;
 - (b) if a regulation is revoked and replaced;
 - (c) if an Act or regulation is amended.

Authorized persons continue to act

52.(2) A person authorized to act under the former Act or regulation has authority to act under the corresponding provisions, if any, of the new or mended one until another person becomes authorized to do so.

Proceedings continued

52.(3) Proceedings commenced under the former Act or regulation shall be continued under the new or amended one, in conformity with the new or amended one as much as possible.

New procedure

52.(4) The procedure established by the new or amended Act or regulation shall be followed, with necessary modifications, in proceedings in relation to matters that happened before the replacement or amendment.

Reduction in penalty

52.(5) If the new or amended Act or regulation provides for a lesser penalty, forfeiture or punishment, the lesser one applies when a sanction is imposed, after the replacement or amendment, in respect of matters that happened before that time.

Regulation continues

52.(6) If an Act under which a regulation has been made is replaced or amended, the regulation remains in force to the extent that it is authorized by the new or amended Act.

Effect of repeal and revocation on amendments

53. The repeal or revocation of an Act or regulation includes the repeal or revocation of any amendment to the Act or regulation.

Regulations - power to make, amend, etc.

54.(1) Power to make regulations includes power to amend, revoke or replace them from time to time.

Survival of power to revoke

54.(2) Power to revoke a regulation remains even if the provision conferring power to make it has been repealed.

New regulation-maker

54.(3) If a provision conferring power on a person or entity to make a regulation is amended, or repealed and replaced, so as to confer the power or substantially the same power on a different person or entity, the second person or entity has power to revoke, amend or replace the regulation made by the first one.

Obsolete regulations

- 55.(1) If a provision of an Act under which a regulation is made is repealed and not replaced, the regulation ceases to have effect, subject to section 51 and subsection 59(3).
- 55.(2) The Lieutenant Governor in Council may, by regulation, revoke a regulation,
 - that has ceased to have effect under subsection (1);
 or
 - (b) that has been rendered obsolete by events or the passage of time.

No implication

- 56.(1) The repeal, revocation or amendment of an Act or regulation does not imply anything about the previous state of the law or that the Act or regulation was previously in force.
- 56.(2) The amendment of an Act or regulation does not imply that the previous state of the law was different.
- 56.(3) The re-enactment, remaking, amendment or changing under Part V (Change Powers) of an Act or regulation does not imply an adoption of any judicial or other interpretation of the language used in the Act or regulation, or of similar language.

No revival

57. The repeal or revocation of an Act or regulation does not imply the revival of an Act or regulation that is not in force or another thing that is not in existence at the time the repeal or revocation takes effect.

REFERENCES

Reference to Act or regulation includes reference to individual provisions

58. A reference to an Act or regulation is also a reference to each provision of the Act or regulation.

Rolling incorporation of Ontario legislation

- 59.(1) A reference in an Act or regulation to a provision of another Act or regulation is a reference to the provision.
 - (a) as amended, re-enacted or remade; or
 - (b) as changed under Part V (Change Power).
- 59.(2) Subsection (1) applies whether the provision is amended, re-enacted, remade or changed under Part V before or after the commencement of the provision containing the reference.

Reference to repealed or unreplaced provision

- 59.(3) If the provision referred to is repealed or revoked, without being replaced,
 - (a) the repealed or revoked provision continues to have effect, but only to the extent that it is necessary to give effect to the Act or regulation that contains the reference; and
 - (b) the reference is to the provision as it read immediately before the repeal or revocation.

NOTA BENE:

As a general rule, the rules governing the transition, revocation and commencement of the Ontario building code provisions are found in Part 4 of Division C.

As an exception to the general rule, despite a regulation being revoked certain provisions of the revoked regulation can be continued. For example, see Sentence 1.3.1.2.(3) of Division A. In the "National Farm Building Code of Canada 1995", in the quoted Articles, a reference to "National Building Code of Canada" is changed to Ontario Regulation 403/97 as it read on December 30, 2006". For purpose of the Articles quoted in Sentence 1.3.1.2.(1) of Division A, the 1997 Code has not been revoked.

Rolling incorporation of other Canadian legislation

- 60.(1) A reference in an Act or Regulation of Canada or of another province or territory of Canada is a reference to the provision.
 - (a) as amended, re-enacted or remade; or
 - (b) as changed in the exercise of a statutory power to make non-substantive changes.
- 60.(2) Subsection (1) applies whether the provision is amended, re-enacted, remade or changed as described in clause (1)(b) before or after the commencement of the provision containing the reference.

Reference to repealed and unreplaced provision

60.(3) If the provision referred to is repealed or revoked, without being replaced, the reference is to the provision as it read immediately before the repeal or revocation.

Incorporation of documents by reference

62.(1) The power to make a regulation may be exercised by incorporating an existing document by reference in whole or in part.

Changes

62.(2) The document may be incorporated subject to such changes as the maker of the regulation considers necessary.

Static incorporation

62.(3) The reference to the document is a reference to it as it read when the provision containing the reference was most recently enacted, made or amended.

NOTA BENE: See Division A, Section 1.5., "Referenced Documents and Organization" and Division B, Section 1.3., "Referenced Documents and Organizations".

Access to incorporated document and earlier versions

- 62.(4) When a document is incorporated by reference, as described in subsection (1), the Minister responsible for the administration of the Act under which the regulation is made shall take steps to ensure that,
 - the incorporated document is readily available to the public, on and after the day the provision containing the reference comes into force; and
 - (b) the incorporated document and any earlier versions of it that were previously incorporated into the regulation or into a predecessor of the regulation remain readily available to the public.

Transition

62.(5) Subsection (4) applies with respect to documents incorporated by reference as described in subsection (1) on and after the day the *Access to Justice Act*, 2006 receives Royal Assent.

NOTA BENE:

Contact information for organizations referenced in Section 1.3. of Division B of the Code can be found on pages A-11 to A-14 of Appendix A, Volume 2, 2006 Building Code Compendium.

Queries governing the availability of referenced documents or prior editions that are no longer available from the organization identified on pages A-11 to A-14 of Appendix A, Volume 2, 2006 Building Code Compendium can be directed to the Building and Development Branch of the Ministry of Municipal Affairs and Housing by telephone at (416) 585-6666 and press #1, by fax at (416) 585-7531 or by Internet under the contact button on the Building Code website.

GENERAL RULES OF CONSTRUCTION Law always speaking

63. The law is always speaking, and the present tense shall be applied to circumstances as they arise.

NOTA BENE:

Those participants that want additional information on the effect of this section may consult the Canadian Legal Institute Website at www.canlii.ca/ In line , "statute name / case name / citation / docket number", type Lazarev to obtain the decision in the case of Lazarev v. Toronto (City).

Number

67. Words in the singular include the plural and words in the plural include the singular.

Gender

 Gender-specific terms include both sexes and include corporations.

PREAMBLES AND REFERENCE AIDS

Preambles

- 69.(1) A preamble to a new Act is part of that Act and may be used to help explain its purpose.
- 69.(2) A preamble to an Act that amends one or more other Acts is part of the amending Act and may be used to explain the purpose of the amendments.

Reference aids

70. Tables of contents, marginal notes, information included to provide legislative history, headnotes and headings are inserted in an Act or regulation for convenience of reference only and do not form part of it.

CROWN

Crown not bound, exception

 No Act or regulation binds Her Majesty or affects Her Majesty's rights or prerogatives unless it expressly states an intention to do so.

NOTA BENE: This explains why the *BCA* does not bind the Crown, the Ontario Provincial Government.

72. Anything begun under a reigning sovereign continues under his or her successor as if no succession had taken place.

PROCLAMATIONS Amendment and revocation - restriction

75.(1) A proclamation that brings an Act into force may be amended or revoked by a further proclamation before the commencement date specified in the original proclamation, but not on or after that date.

Facilitator/Self-Study Participant Note: In this course, the Crown is the provincial government. 75.(2) A proclamation that specifies different commencement dates for different provisions may be amended or revoked with respect to a particular provision before the commencement date specified for that provision, but not on or after that date.

APPOINTMENTS, POWERS AND DELEGATION Implied powers

- 77. Power to appoint a person to a public office includes power to,
 - (a) reappoint or remove the person;
 - appoint a deputy with the same powers as the holder of the office, subject to specified conditions, or with limited powers as specified; and
 - (c) temporarily appoint another person to the office if it is vacant or if the holder of the office is absent or unable to act.

NOTA BENE:

To obtain a copy of a sample By-law to Appoint a Deputy Chief Building Official and to review an explanation of the enabling authority to appoint a Deputy Chief Building Official, consult the Building Code Website at www.ontario.ca/buildingcode, left click "Interpretations" and left click "BCA - Chapter 23". By virtue of Subsection 1.-(1.3) of the Building Code Act, A Deputy Inspector could be appointed for an Inspector who has the same powers and duties as the Chief Building Official in relation to sewage systems or plumbing.

Incidental powers

 If power to do or to enforce the doing of a thing is conferred on a person, all necessary incidental powers are included.

Performance when occasion requires

79. Powers that are conferred on a person may be exercised, and duties that are imposed on a person shall be performed, whenever the occasion requires.

Facilitator / Self-Study / Participant Note to clause 77(b): The appointment must specify the circumstances under which the Deputy Chief Building Official will act in the place of the CBO and may include a limitation so that certain powers of the CBO could not be performed by a Deputy.

Powers and duties remain despite delegation

80. A person on whom an Act confers a power or imposes a duty may exercise it even if it has been delegated to another person.

Survival of delegation

81. The delegation of a power or duty remains valid until it is revoked or amended, even if the author of the delegation is no longer in office.

REGULATIONS AND FORMS

General or particular

82.(1) A regulation may be general or particular in application.

Classes

- 82.(2) The power to make a regulation includes the power to prescribe a class.
- 82.(3) For the purpose of subsection (2), a class may be defined.
 - in terms of any attribute or combination of attributes;
 - (b) as consisting of, including or excluding a specified member.

Deviations from required form

- 84. Deviations from a form whose use is required under an Act do not invalidate the form if,
 - they do not affect the substance and are unlikely to mislead; and
 - (b) the form is organized in the same or substantially the same way as the form whose use is required.

DEFINITIONS

Different forms of defined terms

85. If a term is defined, other forms of the same term have corresponding meanings.

Participant Note: Keep section 84 in mind when you are dealing with the prescribed Application for a Permit to Construct or Demolish [see Division C, Sentence 1.3.1.2.(2)] and the prescribed Orders [see Division C, Sentence 1.3.5.6.(1)] and Certificates [see Division C, Sentence

3.7.4.3.(7)] that are legislated by the Act and

prescribed in the Code.

Facilitator/Self-Study

Terms used in regulations

86. Terms used in regulations have the same meaning as in the Act under whose authority they are made.

Definitions

87. In every Act and regulation,

"Act" means an Act of the Legislature and "statute" has the same meaning;

"Assembly" and "Legislative Assembly" mean the Legislative Assembly of Ontario;

"Her Majesty", "His Majesty", "the Queen", "the King" or "the Crown" means the Sovereign of the United Kingdom, Canada and Her other Realms and Territories, and Head of the Commonwealth;

"Holiday" means a holiday as described in section 88

"Individual" means a natural person;

NOTA BENE: A natural person is a human being.

"Legislature" means the Lieutenant Governor acting by and with the advice and consent of the Assembly;

"Lieutenant Governor" means the Lieutenant Governor of Ontario, or the person administering the Government of Ontario for the time being in Her Majesty's name, by whatever title he or she is designated;

"Lieutenant Governor in Council" means the Lieutenant Governor acting by and with the advice of the Executive Council of Ontario"

"person" includes a corporation;

"Proclamation" means a proclamation issued by the Lieutenant Governor under the Great Seal;

"regulation" means a regulation as defined in Part III;

TIME

Holidays

- 88.(1) This section applies for the purposes of the definition of "holiday in section 87.
- 88.(2) The following are holidays:
 - 1. Sunday.
 - New Year's Day.
 - 3. Good Friday.
 - Easter Monday.
 - Victoria Day.
 - Canada Day.
 - Labour Day.
 - 8. Thanksgiving Day.
 - Remembrance Day.
 - Christmas Day.
 - Boxing Day.
 - Any day fixed as a holiday by proclamation of the Governor General or Lieutenant Governor.
- 88.(3) When New Year's Day falls on a Sunday, the following Monday is also a holiday.
- 88.(4) In accordance with the *Holidays Act* (Canada), when July 1 is a Sunday, Canada Day fall on July 2.
- 88.(5) When Christmas Day falls on a Saturday, the following Monday is also a holiday, and when it falls on a Sunday, the following Tuesday is also a holiday.

Computation of time Holidays

89.(1) Time limits that would otherwise expire on a holiday are extended to include the next day that is not a holiday.

Days on which offices closed

89.(2) Time limits for registering or filing documents or for doing anything else that expires on a day when the place for doing so is not open its regular hours of business are extended to include the next day the place is open during its regular hours of business are extended to include the next day the place is open during its regular hours of business.

Number of days between events

89.(3) A reference to a number of days between two events excludes the day on which the first event happens and includes the day on which the second event happens, even if the reference is to "at least" or "not less than" a number of days.

Specified day included

89.(4) A period of time described as beginning or ending on, at or with a specified day includes that day.

Specified day excluded

89.(5) A period of time described as beginning before or after a specified day excludes that day.

Months

- 89.(6) If a period of time is described as a number of months before or after a specified day, the following rules apply:
 - The number of months are counted from the specified day, excluding the month in which the specified day falls.
 - 2. The specified day is excluded.
 - The period includes the day in the last month counted that has the same calendar number as the specified day or, if that month has no day with that number, its last day.

Leap years

89.(7) The anniversary of an event that took place on February 29 took place on February 28, except inn a leap year.

MISCELLANEOUS

Private Acts

- 91.(1) A private Act does not affect the rights of a person or entity except as mentioned in the Act.
- 91.(2) Subsection (1) does not apply to a private Act respecting the powers or duties of a municipality.

Reference to series

 If reference is made to a series, the first and last item are included.

Security

96.(1) A requirement to give security is a requirement to give security that is sufficient for the purpose.

THINGS OTHER THAN THE *LEGISLATION ACT* THAT ARE WITHIN THE NEED TO KNOW BASIS

IMPERATIVE AND PERMISSIVE FORMS

In the English language the word "shall" is construed as imperative, must be done, there is no choice, and the word "may" as permissive, may be done or may not be done, there is a choice.

For example, under Subsection 12.-(5) of the BCA, the authority to post an Order to Comply is permissive; and, according to Subsection 14.-(2) of the BCA, the duty to post a Stop Work Order is imperative.

NOTA BENE:

In Subsection 7.-(1) of the BCA the phrase "The council of a municipality ... may pass a by-law" is permissive. Here, the word "may" does not mean that the Council of the Municipality does not need to enact a Building By-law. All it really means is that council may select among the topics of Clauses 7.-(1)(a) to (j) when enacting the Building By-law. For instance the Council of a Municipality may decide not to provide for the refund of fees as enabled by Clause 7.(1)(d) of the BCA.

The same would apply to another Principal Authority who needs to enact a regulation or pass a resolution according to Subsection 7.-(1) of the BCA.



OVERVIEW OF THE STRUCTURE OF THE OBC

The following synopsis on the structure of the building code is provided as a guide to reading and understanding "legalese". The composition of Ontario's 2006 Objective-Based Building Code will be dealt with in greater detail in Module Three.

DEFINED TERMS

Div. A, Sentence 1.4.1.2.(1) of the building code informs us as follows:

Each of the words and terms in italics in this Code has,

- a) the same meaning as in Subsection 1.-(1) of the Act, if not defined in Clause (b), or
- b) the following meaning for the purpose of this Code and, where indicated, for the purposes of the Act:

NOTA BENE:

These definitions always apply unless a term has a special purpose definition listed elsewhere than Subsection 1.-(1) of the Act and Div. A, Clause 1.4.1.2.(1)(b) of the Code.

For example, in the BCA, a definition of "owner" is inserted at Subsection 15.1-(1) because it has a special meaning for Property Standards matters under Sections 15.1 to 15.8 only of the BCA.

Similarly, a definition of "owner" is inserted in Sentence 1.3.1.2.(1) of Division C to deal with applications for permits under Section 8 of the *Building Code Act*.

The definitions of "owner" were not included in Subsection 1.-(1) of the Act or Div. A, Clause 1.4.1.2.(1)(b) of the Code in order not to interfere with each other because respectively, they have special meaning in only part of the Act and the Code. This concept of general and unique definitions is reinforced by the definition of *soil*. The word "soil" has a general meaning in Div. A, Clause 1.4.1.2.(1)(b) of the OBC and a unique meaning for on-site sewage systems in Div. B, Sentence 8.1.1.2.(1) of the OBC.

NON-DEFINED TERMS

Facilitator/Self-Study
Participant Note: The
definition from the Oxford
English Dictionary is the
usually accepted authority
if there is a dispute
regarding meaning and use
of the word. The Concise
Oxford Dictionary is based
on the Oxford English
Dictionary,

According to Div. A, Sentence 1.4.1.1.(1) of the OBC:

Definitions of words and phrases used in this Code that are not included in the list of definitions in Articles 1.4.1.2. and 1.4.1.3. and are not defined in another provision of this Code shall have the meanings that are commonly assigned to them in the context in which they are used, taking into account the specialized use of terms by the various trades and professions to which the terminology applies.

ABBREVIATIONS of PROPER NAMES

Div A, Sentence 1.5.2.1.(1) informs us that:

The abbreviations of proper names in this Code shall have the meaning assigned to them in Div. B. Article 1.3.2.1.

The OBC makes use of abbreviations instead of the full proper names of agencies referenced in the OBC. For example, Div. B, Sentence 9.19.1.2.(5) makes reference to **CAN3** and Div. B, Sentence 9.3.1.3.(1) makes reference to **CAN/CSA**. A review of Div. B, Sentence 1.3.2.1.(1) and associated Table 1.3.2.1. reveal that both are abbreviations of the proper name "Canadian Standards Association".

NOTA BENE:

Contact information for organizations referenced in Section 1.3. of Division B of the Code can be found on pages A-11 to A-14 of Appendix A, Volume 2, 2006 Building Code Compendium.

SYMBOLS AND OTHER ABBREVIATIONS

Div. A, Sentence 1.4.2.1.(1) of the OBC references Table 1.4.2.1., a list of symbols and abbreviations that are used repeatedly throughout the text of the OBC. As examples, the letter "h" means "hour" in Div. B, Sentence 9.10.9.11.(1) and "hours" in Div. B, Sentence 9.10.9.11.(2). The expression "1 in 2" means a slope of 1 vertical unit to 2 horizontal units where the units of measurement are the same whether the units are feet, inches, millimetres or metres.

Facilitator/Self-Study
Participant Note: Always
consult the "Scope" or
"Application" which is
usually located at the
beginning of a Subsection
e.g. see Div. B. Sentence
8.1.1.1(1)

BASIC RULES FOR READING THE OBC – SCOPE AND APPLICATION OF OBC REQUIREMENTS

There are 12 Parts to Division B of the building code. Each Part does not apply to every building. Guidance in the application of each of the 12 Parts of Div. B of the OBC to a particular building is found in Div. A, Subsection 1.1.2., "Application of Division B".

For instance Div. A, Sentence 1.1.2.1.(1) informs us that <u>Parts 1</u>, 7 and 12 of <u>Division B apply to all buildings</u>. In turn, buildings are then primarily regulated by either <u>Parts 3</u>, 4, 5 and 6 or <u>Part 9</u>. A review of Div. A, Articles 1.1.2.2. and 1.1.2.4. reveals that the decision is based on three variables:

- ✓ occupancy classification,
- ✓ building area, and
- ✓ building height.

When considering the construction of a building regulated by Div. B, Part 9; not all of the requirements of Part 9 apply to every building. As an example, Div. B, Sentence 9.25.1.1.(1) informs us that the "Heat Transfer, Air Leakage and Condensation Control" provisions of Section 9.25., apply to buildings of residential occupancy intended for use on a continuing basis during the winter months.

In considering and applying the provisions of Division B to a building, one does not jump from Part 9 to Part 3 or from Part 3 to Part 9 unless the OBC provides direction to do so. Consider Articles 3.1.7.1. and 9.10.3.1. as one example and Articles 3.1.4.2. and 9.10.1.3. as a second example. In the first instance, Sentence 9.10.3.1.(1) informs us that a fire-resistance rating can be determined in conformance with the test methods described in Part 3. Hence, the requirements of Article 3.1.7.1. may be applied to a building regulated by Part 9.

In the second instance, Clause 3.1.4.2.(1)(a) informs us that foamed plastic insulation in a wall or ceiling assembly in a building permitted to be of combustible construction by Article 3.2.2. whatever, from Articles 3.2.2.20. to 3.2.2.83., may be protected by one of the interior finishes described in Subsections 9.29.4. to 9.29.9. In this second instance, a provision of Part 9 is deemed to satisfy the requirements for the construction of a Part 3 building.

Facilitator Self-Study
Participant Note: For an
overview of the alphanumerical classification of
the occupancy of buildings,
consult Div. B. Table
3.1.2.1. of the OBC and the
corresponding definitions
in Div. A. Clause
1.4.1.2.(1)(b).

In Module Three, "Understanding the Legal Framework" we will examine the purpose of each Part of each Division of Ontario's 2006 Objective-Based Building Code in more detail.

DEALING WITH "AND" IN SENTENCES WITH THREE OR MORE CLAUSES

When the word "and" is found at the end of the second last Clause of a Sentence with more than two Clauses it Gmeans that the requirements of every Clause apply to satisfy the requirement of the Sentence.

Example: Div. B, Sentence 9.3.2.4.(1) informs us that OSB (oriented strandboard), waferboard and plywood used for roof sheathing, wall sheathing and subflooring must be legibly identified on the face of the material to indicate (three things):

1- the manufacturer of the material,

AND

2- the standard to which the material is produced,

AND

3- that the material is of an exterior type.

The same logic would apply to role of Building Code Act Practitioners under Section 1.1 of the *Building Code Act*. Those Building Code Act Practitioners cannot pick and choose from their legislated role; they are responsible to perform all of the activities assigned by the legislation.

DEALING WITH "AND" IN SENTENCES WITH LESS THAN THREE CLAUSES

In the case of Sentences with less than three Clauses, you have to analyse the construction of the sentence (syntax) to conclude on the effect of the word "and". For example, as found at the end of Clause 1.3.1.3.(3)(a) of Division C it means that the period within which a permit under Subsection 8.-(1) of the Act is issued or refused is the greater of 10 days and the time period shown in Table 1.3.1.3. or required by Clauses 1.3.1.3.(4)(a) to (d). The Clauses of Sentence 1.3.1.3.(3) of Division C clearly indicate that the permit must be issued or refused within the longer period of the two time alternatives.

As another example, the word "and" as found in Note (2) to Table 11.4.3.3. of Division B means that the evaluation of the early warning and evacuation system must be carried out against the provisions of the Note (2) row in two separate instances:

 firstly, when the change of major occupancy is to one of equal or lesser hazard,

and

secondly, when there is an increase in occupant load of 15% or less.

NOTA BENE: Both requirements need not be present for the provisions of Note (2) to apply; only one suffice.

The same approach would be used for Note (3). The word "and" as found in Note (3) to Table 11.4.3.3. of Division B means that the evaluation of the early warning and evacuation system must be carried out against the provisions of the Note (3) row in two separate instances:

firstly, when the change of major occupancy is to one of greater hazard

and

 secondly, when there is an increase in occupant load of more than 15%.

NOTA BENE: Both requirements need not be present for the provisions of Note (3) to apply, only one suffice.

DEALING WITH "OR" IN SENTENCES WITH MULTIPLE CLAUSES

When the word "or" is found at the end of the second last Clause of a Sentence with multiple Clauses it means that the requirement of the Sentence is satisfied by any Clause applied individually.

Example: Div. P Sentence 3.10.4.2.(1) informs us that for the purposes of Subsection 3.2.2. the building area of a self-service storage building can be determined by any one of three methods:

1- the building area of each building,

OR

2- the total of the building areas of all buildings as a group,

OR

3- the total of the building areas of any number or group of buildings.

In some cases, you have to analyse the construction of the sentence (syntax) to conclude on the effect of the word "or". For example, consider the provisions of Article 9.8.8.6., "Design to Prevent Climbing".

As a rule, Sentence 9.8.8.6.(1) provides that guards, required by Article 9.8.8.1., be designed so that no member, attachment or opening will facilitate climbing.

The four Clauses of Sentence 9.8.8.6.(2) qualify the rule of Sentence (1) by providing four checks that need to be performed.

Check #1:

Guards are designed to prevent climbing when any elements protruding from the vertical and located within the area 140 mm (5½ in) and 900 mm (2 ft 11 in) above the floor or walking surface protected by the guard are located more than 450 mm (17¾ in) horizontally and vertically from each other.

[Div. B, Clause 9.8.8.6.(2)(a)]

NOTA BENE:

When the protruding elements are 450 mm or less horizontally or vertically from each other, the required guard is deemed to facilitate climbing and is not acceptable.

or check #2:

Guards are designed to prevent climbing when any elements protruding from the vertical and located within the area 140 mm $(5\frac{1}{2} \text{ in})$ and 900 mm (2 ft 11 in) above the floor or walking surface protected by the guard provide not more than 15 mm $(\frac{5}{8} \text{ in})$ horizontal offset.

[Div. B, Clause 9.8.8.6.(2)(b)]

NOTA BENE:

When the protruding element provides more than 15 mm (5% in) horizontal offset, the guard is deemed to facilitate climbing and is not acceptable.

or check #3:

Guards are designed to prevent climbing when any elements protruding from the vertical and located within the area 140 mm (5½ in) and 900 mm (2 ft 11 in) above the floor or walking surface protected by the guard do not provide a toe-space more than 45 mm ($1\frac{3}{4}$ in) horizontally and 20 mm ($1\frac{3}{16}$ in) vertically.

[Div. B. Clause 9.8.8.6.(2)(c)]

NOTA BENE:

When the toe-space is more than 45 mm (13/4 in) horizontally or 20 mm (13/16 in) vertically, the guard is deemed to facilitate climbing and is not acceptable.

or check #4

Guards are designed to prevent climbing when any elements protruding from the vertical and located within the area 140 mm (5½ in) and 900 mm (2 ft 11 in) above the floor or walking surface protected by the guard present more than 1-in-2 slope [1 mm (1 in) in the vertical to 2 mm (2 in) in the horizontal] on the offset. [Div. B, Clause 9.8.8.6.(2)(d)]

NOTA BENE:

When the protruding element provides a slope of 1-in-2 or less, the guard is deemed to facilitate climbing and is not acceptable.

A slope of 1:2 has an angle of 63°- 30 min. from the vertical. A slope of 1:1 has an angle of 45° from the vertical. A slope of 1:3 has an angle of 71°- 30 min. from the vertical. **Consequently**, when the slope needs to be more than 1-in-2, the horizontal portion must be less than 2 because in the slope format that decreases the angle from the vertical. In other words, the angle from the vertical must be less than 63°- 30 min. to reduce the possibility of a toe-hold and thus satisfy Clause 9.8.8.6.(2)(d).

Here the word **or** is used because only one of the design parameters needs be offended for the guard to be unacceptable. If the word "**and**", appeared at the end of Clause 9.8.8.6.(2)(c) all four conditions would need to be present to make the guard unacceptable. With the word "**or**", only one condition, not four, needs to be present to make a required guard deemed to facilitate climbing and not acceptable. Nonetheless, required guards must be checked against all four design parameters to confirm that they will not facilitate climbing.

RULES (provisions) OF THE OBC

The OBC is structured into a number of rules that apply without exception. For example, Div. B, Sentences 9.10.1.3.(1) to (8) inform us that the identified items are dealt with exclusively, without exception, by Part 3 of Division B and Sentences 9.10.1.4.(1) and (2) tell us that certain other identified items are dealt with exclusively by Part 6 of Division B of the Code.

GENERAL RULES OF THE OBC AND EXCEPTIONS

At other times, the user of the Code has to consider a general rule and exceptions to the general rule. Consider the requirements for concrete in Div. B, Sentence 9.3.1.1.(1):

<u>Facilitator/Self-Study</u> <u>Participant Note:</u> Except means "not including". Except as provided in Sentence (2), nominally unreinforced concrete shall be designed, mixed, placed, cured and tested in accordance with CAN/CSA-A438, "Concrete Construction for Housing and Small Buildings".

The general rule of Div. B, Sentence 9.3.1.1.(1) informs us that nominally unreinforced concrete in a Part 9 building must be designed, mixed, placed, cured and tested in accordance with CAN/CSA-A438-00, "Concrete Construction for Housing and Small Buildings".

OR

As an exception to the general rule of Div. B, Sentence 9.3.1.1.(1), Sentence (2) states:

Nominally unreinforced site-batched concrete shall be designed, mixed, placed and cured in accordance with Articles 9.3.1.2. to 9.3.1.9.

VERY IMPORTANT:

When the OBC spells out a general rule and exceptions thereto, conformity with the OBC is obtained by complying with either the general rule or the exception thereto.

TABLES, TEXT AND FOOTNOTES

Whenever you are called upon to use a Table in the OBC, you have to consider the text associated with the Table and the footnotes.

For example, the provisions of Div. B, Table 9.8.4.2., "Riser Height, Run and Tread Depth for Rectangular Treads" form part of Sentences 9.8.4.2.(1) and 9.8.4.3.(1) and the three notes differentiate between service, private and public stairs.

Facilitator/Self-Study
Participant Note: For
Referenced Documents,
consult Div. A, Section 1.5.
and Div. B, Section 1.3.

The application of each Supplementary Standard is provided by the text of the OBC. For example, the application of SA-1, "Attribution Tables" is referenced in Div. A. Clause 1.2.1.1.(1)(b). Sentence 1.2.1.1.(2) and Div. B. Table 1.3.1.2.

REFERENCED DOCUMENTS and SUPPLEMENTARY STANDARDS

By virtue of Paragraph 34.-(1) 9. of the BCA, Supplementary Standards SA-1, SB-1 to SB-11 and SC-1 to Ontario's 2006 Objective-Based Building Code and the Referenced Documents (standards) listed in Div. B, Table 1.3.1.2. form an integral part of the text of the building code. Consult Div. A, Articles 1.5.1.1., "Application of Referenced Documents", 1.5.1.2. "Conflicting Requirements", 1.5.1.3. "Applicable Editions" and 1.5.2.1. "Abbreviations of Proper Names".

APPENDICES AND ILLUSTRATED GUIDES

On the other hand, Appendix A, which contains "Explanatory Material for Division A", "Explanatory Material for Division B" and "Explanatory Material for Division C"; Appendix B, "Imperial Conversions of Metric Values"; and, the various "Guides" have all been prepared for convenience only and as such are explanations that do <u>not</u> form part of the legal document which is Ontario's 2006 Objective-Based Building Code and are <u>not</u> intended to limit the ways by which compliance can be achieved.



EXERCISE # 4 - MEANING OF TERMS AND APPLICATION OF RULES

The objective of this exercise is to provide you with a few examples of the relationship between the terms of the Building Code Act, the building code and their effect on the Building By-law and your day-to-day activities. When prompted, provide references to support your answers.

- The authority of an Inspector to make an Order to Comply under Subsection 12.-(2) of the BCA is;
 - imperative, must be done, in obtaining compliance with the OBC
 - b) questionable practice for a first time offender of the OBC
 - permissive, may be done, in obtaining compliance with the OBC
 - d) the only means available to an Inspector in obtaining compliance with the OBC
- 2. According to Section 7.1 of the BCA, the duty of a Principal Authority to establish and enforce a Code of Conduct is;
 - a) imperative, must be done
 - b) imperative, must be done, if the Principal Authority does not have a policy to deal with conflicts of interest
 - c) permissive, may be done
 - d) permissive, may be done, if the Principal Authority does not have a policy to deal with conflicts of interests

- According to the BCA, the authority and duty of the council of a municipality to appoint such inspectors as are necessary, in addition to a Chief Building Official, for the enforcement of the BCA is found in Subsection:
 - a) 3.-(2)
 - b) 3.1-(2)
 - c) 6.1-(4)
 - d) 6.2-(3)

BCA Reference for the definition of Inspector and municipality:

- 4. The term smoke alarm is defined in:
 - Subsection 1.-(1) of the BCA for purposes of the BCA and of the Code
 - b) Div. A, Clause 1.4.1.2.(1)(b) of the OBC for purposes of the Code
 - Div. B, Clause 1.4.1.2.(1)(b) of the OBC for purposes of the Code
 - d) Div. C, Clause 1.4.1.2.(1)(b) of the OBC for purposes of the Code
- 5. In the OBC, the abbreviation "g" means;
 - a) gram or grams
 - b) gauge or gauges
 - c) ground floor of every building
 - d) the 7th letter of the alphabet

OBC References:

6. The construction of a building of residential occupancy that has three storeys in building height and a building area of 600 m² would in the first instance be regulated by Div. B; a) Part 9 of the OBC b) Part 3 of the OBC c) Part 10 of the OBC d) Part 11 of the OBC OBC References: 7. The construction of a building of residential occupancy that is one storey in building height with a building area of 610 m² would in the first instance be regulated by Div. B: a) Part 9 of the OBC b) Part 3 of the OBC c) Part 10 of the OBC d) Part 11 of the OBC OBC Reference: 8. The construction of a self-service storage building, (a special Group F Division 2 occupancy), of one storey in building height with a building area of 300 m² is regulated by Div. B; a) Part 9 of the OBC b) Section 3.10. of the OBC and the applicable requirements of Part 3 c) Part 3 of the OBC d) Section 3.10. of the OBC and the applicable requirements of Part 9 OBC References:

- The area of windows (a health requirement) for dwelling units in a 10 storey Group C residential building is calculated from the values found in Division B,
 - a) Sentence 3.7.2.1.(1)
 - b) Table 9.7.1.2. by way of Sentence 3.7.2.1.(1)
 - c) Table 9.6.6.1. by way of Sentence 3.7.2.1.(1)
 - d) Table 9.7.1.2. by way of Article A-3.7.2.1.

OBC References:

- 10. As a general rule, the requirements of Div. B, Section 9.5. "Design of Areas and Spaces" apply to a Part 9;
 - a) hotel/motel occupancy
 - cottage built as a dwelling unit and used at various times throughout the year as a seasonal recreational building
 - c) all occupancies
 - d) dwelling unit that is intended for use on a continuing or year round basis as a principal residence

OBC Reference:

- 11. According to the *Legislation Act*, the By-law enacted by the council of a municipality to appoint a Chief Building Official*;
 - a) may restrict the powers and duties of the CBO under the BCA
 - b) may not restrict the powers and duties of the CBO under the BCA
 - may modify the powers and duties of the CBO when dealing with an unsafe building
 - may delegate to the CBO the authority to appoint a Deputy Chief Building Official

Legislation Act reference:

Participant Note: The same would apply to a CBO who is appointed by an uppertier municipality or an Inspector who has the same powers and duties as the CBO in relation to sewage systems or plumbing and is appointed by another principal authority.

- 12. According to Subsection 3.-(2) of the BCA and Section 79 of the Legislation Act, 2006 a Principal Authority must always have a CBO to act as the occasion requires. According to the Legislation Act when the Chief Building Official is absent or becomes unable to act, the Principal Authority:
 - a) must appoint a Deputy Chief Building Official (DCBO)
 - b) must temporarily appoint another person to act as CBO during his or her absence
 - must appoint a DCBO or appoint another person who will temporarily act as CBO during his or her absence
 - d) does not need to do anything to offset the absences of its CBO

Legislation	Act	references:				
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- 13. Subsection 1.-(1.3) and Section 6.1 of the BCA inform us that an Inspector who has the same powers and duties as the CBO in relation to plumbing:
 - a) does not have the authority to issue a conditional permit
 - b) has the authority to issue a conditional permit
 - c) has the authority to issue a conditional permit if the appointment By-law extends that authority to him or her
 - d) does not have the authority to issue a conditional permit unless the authority is given to him or her by the appointment By-law

200	D-6		
SUA	References:		

- 14. Subsection 1.-(1.3) and Section 6.2 of the BCA inform us that an Inspector who has the same powers and duties as the CBO in relation to sewage systems;
 - a) does not have to authority to issue a conditional permit
 - b) has the authority to issue a conditional permit
 - c) has the authority to issue a conditional permit if the appointment By-law extended that authority to him or her
 - d) does not have the authority to issue a conditional permit unless the authority is given to him or her by the Principal Authority

BCA References: _	

- 15. Subject to confirmation by the plans review activity, the method of calculating the building area of a self-service storage building, for purposes of Article 3.10.4.2. is to be decided by;
 - a) the qualified designer who will review and take responsibility for design activities
 - b) the Chief Building Official or the Inspector who has the same powers and duties as the CBO, as the case may be
 - the Chief Building Official because the Inspectors who have the same powers and duties as the CBO in relation to plumbing or on-site sewage systems do not need to deal with building area
 - d) council who is given the responsibility for enforcement under Subsection 3.-(2) of the BCA

- According to the Legislation Act, 2006 the By-law enacted by the council of municipality to appoint a Deputy Chief Building Official (DCBO);
 - a) may restrict the powers and authority that the DCBO would otherwise have under the BCA
 - may not restrict the powers and authority that the DCBO would otherwise have under the BCA
 - may delegate to the CBO to authority to restrict the powers and authority that the DCBO would otherwise have under the BCA
 - d) may delegate to the CBO the authority to appoint a Deputy Chief Building Official

Legislation Act Reference:

17. Consult Div. A, Sentence 1.4.1.1.(1) of the OBC, it provides direction for dealing with non-defined terms. In your own words, express the meaning of the sentence.



EXERCISE #5- REVIEW OF MODULE ONE

This is a discussion exercise intended to recap the subject matter contained in this module. In the space provided under each heading, note any comment, concern or question and when the Facilitator leads the class discussion, it will be time to make your comment, raise your concern or ask your question.

Rules from the Legislation Act

The rules of the *Legislation Act*, 2006, S.O. 2006 chapter 21, Schedule F provide consistency in understanding the legal language of Acts and Regulations. It has limited application to Bylaws, Resolutions and Regulations as enacted by Principal Authorities and provided ground rules for dealing with certain administrative issues that you may encounter in your day-to-day activities.

In a nut shell, the nine Parts of the *Legislation Act, 2006* have provisions about the publication, citation and interpretation of Ontario legislation.

Overview of the Structure of the Code Defined Terms

The definitions provide consistent meaning within the BCA, the Code and the Building By-laws, Regulations and Resolutions enacted under Section 7 of the BCA. See BCA Subsection 1.-(1) and OBC Div. A, Clause 1.4.1.2.(1)(b)

Some defined Terms have a limited application within the text of the BCA and the OBC and are found elsewhere than Subsection 1.-(1) of the BCA and Div. A, Clause 1.4.1.2.(1)(b) of the Code. For example, see Subsections 15.11-(5) and (6) of the BCA [design] and from Div. B, Sentences 8.1.1.2.(1) [soil], 10.1.1.3.(1) [building system] and 11.1.1.2.(1) [building system].

Non-Defined Terms

They have the meaning which is commonly assigned to them in the context in which they are used taking into account their specialized use by the various trades and professions to which the terminology applies. The definition from the Oxford English Dictionary is the usually accepted authority if there is a dispute regarding meaning and use of a non-defined term. The Concise Oxford Dictionary is based on the Oxford English Dictionary. [Div. A, Sentence 1.4.1.1.(1)]

Abbreviations of Proper Names

They are listed in Div. B, Table 1.3.2.1. by way of Div. A, Sentence 1.5.2.1.(1) Contact information for the organizations referenced in the Code can be found in Article A-1.3.2.1. of Appendix A.

Symbols and Other Abbreviations

Symbols and abbreviations found in the Code are listed in Div. A, Table 1.4.2.1.

BASIC RULES FOR READING THE OBC Scope and Application of OBC Requirements

The Scope and Application of OBC requirements are usually found at the first few Subsections of each Part of the OBC. The Scope and Application must always be consulted to determine if the rules, general rules and exceptions that follow are applicable to the case at hand. For example, see Div. B, Subsections 5.1.1. and 5.1.2. and 7.1.1. and 7.1.2.

Facilitator/Self-Study
Participant Note: In
considering "and" and
"or", this is a good reason
not to jump to conclusions
until the entire Article and
the Scope or Application
that precedes the Article
has been read.

Dealing with "and" in Sentences with three or more Clauses

When the word "and" is found at the end of the second last Clause of a Sentence with more than two Clauses, it signifies that the requirements of every Clause apply to the Sentence.

Dealing with "and" in Sentences with less than three Clauses

In the case of Sentences with less than three Clauses you have to analyse the construction of the sentence (syntax) to conclude on the effect of the word "and".

Dealing with "or" in Sentences with Multiple Clauses

When the word "or" is found at the end of the second last Clause of multiple Clauses, it signifies that the requirement of the Sentence is satisfied by <u>any</u> Clause as applied individually.

In some cases, you have to analyse the construction of the sentence (syntax) to conclude on the effect of the word "or". For example, consider the provisions of Article 9.8.8.6., "Design to Prevent Climbing".

Rules	(provisions)	of the	OBC
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Rules apply without exception when relevant. For example, Div. B, Article 9.10.19.1., "Required Smoke Alarms".

Facilitator/Self-Study
Participant Note: Another
reason not to jump to
conclusions until you have
read the entire Article and
the exceptions thereto.

General Rules of the OBC and Exceptions

When the OBC spells out a general rule and exceptions thereto, conformity with the OBC is obtained by complying with <a href="mailto:either_ethe-percentage-nule-pi-the-pe-th

Tables, Text and Footnotes

When dealing with a Table you have to consider the text associated with the Table, the Table and the footnotes.

REFERENCED DOCUMENTS and SUPPLEMENTARY STANDARDS

They form an integral part of the OBC and the text of the OBC tells you when they need to be considered. For example, Div. B, Sentence 9.8.8.2.(5) informs us that guards constructed in accordance with the provisions of Supplementary Standard SB-7 are deemed to satisfy the requirements of Sentence 9.8.8.2.(1) and Table 9.8.8.2., "Specified Loads for Guards".

Appendices and Illustrated Guides

They have be	een prep	ared for co	nvenien	ce only and	as such are
explanations	that do	not form	part of	the OBC	and are not
intended to	limit the	e ways by	which	compliance	e with OBC
requirements	can be	achieved.			

CLOSING COMMENTS

In preparation to attend this course, you are asked to complete as many of the exercises as you can. During the delivery of the course you are asked to obey the <u>STOP</u> signs, the facilitator will provide guidance to keep the course moving. Bring your questions and comments to the course and participate in all the discussions.

Your evaluation of the course and comments on its contents will be collected during the final session. Your input is important, it enables the Building and Development Branch of the Ministry of Municipal Affairs and Housing to keep the course current to meet your needs. In preparation, you are asked to note your comments on plain paper. They will be collected at the end of the course. You will also be asked to evaluate the Facilitator and the facilities where the course is being held.

There will not be a pre-course test nor a post-course test for this course. For details about the registration process, examination dates and locations, consult the Building Code website at http://www.ontario.ca/buildingcode Left click "Qualification and Registration and left click on the category of practitioner that is applicable to you; then left click on "Examination Schedule" where there is a link to the "Examination Application Form".

Unlike the course, for the qualification examination, you will not be asked to provide references to support your answers. Remember, you need to <u>find</u> a requirement before you can <u>understand</u> and <u>apply</u> it.



MODULE TWO - COUNCIL AND THE ENFORCEMENT OF THE BCA

INTRODUCTION

Except where otherwise provided by the *Building Code Act*, Subsection 3.-(1) assigns to the council of the municipality, the responsibility for the enforcement of the BCA.

What must the council of the municipality do to satisfy its responsibility to enforce the BCA and the provisions of the building code? Before we look at the specifics, under the BCA, you have to understand the constitutional context within which council, as the local government, operates. The following extract from the Municipal Councillor's Handbook, published by the Ministry of Municipal Affairs and Housing provides us with the big picture overview of the legislative authority of council.

"LEGAL CONSTRAINTS ON EXERCISING POWER. The most fundamental limitation arises from the subordinate constitutional position of local government. Under the Constitution Act, 1982 the local level of government is not given specific responsibilities or a guaranteed right to exist. Instead the constitution stipulates that provincial governments have the right to pass laws respecting the creation and existence of municipal government. Because they are provincial creations, municipalities may only do what they have been authorized to do by the provincial government. If a municipality takes action for which it does not have legal authority, or exceeds the limits of its authority, then should the courts be invoked, they will quash the action as being beyond the powers of the municipality."

OBJECTIVES

In this module you will:

- define each Principal Authority and establish its authority to enforce the BCA and the provisions of the OBC,
- gain knowledge on the role of council as the local government,
- examine a model for effective communication between council and staff of a municipality,
- review the role and duties of council in the enforcement of the BCA and the provisions of the OBC,

- ★ identify the 11 different models for the enforcement of the BCA.
- ★ compare the duties and powers and relationship of officials appointed by different Principal Authorities,
- be introduced to the concept of appointing a Registered Code Agency to perform functions in respect of the construction of buildings, and
- * list the discretionary powers of council (principal authority) which may be delegated to its Chief Building Official (CBO).

THE PRINCIPAL AUTHORITY AND TYPES OF MUNICIPALITIES

The amended BCA makes use of the term "principal authority" to identify the various entities who can have the responsibility for the enforcement of the BCA and the provisions of the Code or as the case may be, the enforcement of the BCA and specific parts of the Code. While the term principal authority lightens the written text of the BCA, it must always be taken within the context that is intended for the enforcement model at hand. The following exercise will help to clarify the meaning and illustrate the applicable responsibility of each principal authority.

Facilitator/Self-Study
Participant Note: The
Town of Orangeville is a
lower-tier local
municipality in The County
of Dufferin, the upper-tier
municipality.

The Separated Town of Gananoque is a singletier/local municipality which does not form part of the upper-tier municipality, The United Counties of Leeds and Grenville.

The Town of Kapuskasing is a single-tier/local municipality in Cochrane District. The definition of principal authority in Subsection 1.-(1) of the BCA makes use of the terms "municipality" and "upper-tier municipality". In turn, "municipality" is defined to mean "a local municipality". The *Municipal Act 2001*, S.O. 2001 chapter 25 provides the following definitions.

"County" means an upper-tier municipality that was a county, including the Frontenac Management Board.

"Municipality" means a geographic area whose inhabitants are incorporated.

"Local municipality" means a single-tier municipality or a <u>lower-tier</u> <u>municipality</u>.

"Lower-tier municipality" means a municipality that forms part of an upper-tier municipality for municipal purposes.

"Regional municipality" means an upper-tier municipality that was a regional or district municipality or the County of Oxford on December 31, 2002.

"Single tier municipality" means a municipality, other than an upper-tier municipality, that does not form part of an upper-tier municipality for municipal purposes.

"Unorganized territory" means a geographic area without municipal organization.

"Upper-tier municipality" means a municipality of which two or more lower-tier municipalities form part for municipal purposes.

Subsection 1.-(2) of the *Municipal Act*, goes on to inform us that a reference to a municipality is a reference to its geographic area or to the municipal corporation, as the context requires.

EXERCISE # 1 IDENTIFYING THE PRINCIPAL AUTHORITY AND THE PROVISIONS OF THE OBC IT COULD ENFORCE

To complete this exercise you will need to consult Subsection 1.-(1) "Definitions" of the Act. You are asked to fill-in the blank spaces. To familiarize yourself with the role of each principal authority you should read the BCA and OBC references that are provided as well as those that you will write in the blank spaces.

According to the BCA, principal authority means:

a) DR	-
OR C)	that has entered into
an agreement with one or more municipalities under Subsection:	
of the BCA, for the enforcem	nent of the OBC,
of the BCA, for the enforcem	nent of plumbing, or
of the BCA, for the enforceme	ent of sewage systems.

d) a board of health (health unit) which;

	is prescribed in Division C, Column 1 of Table 1.7.1.1., for the purposes of Subsection of the BCA, to enforce the provisions of the BCA and OBC related to sewage systems in the municipalities and territory without municipal organization of Northern Ontario shown in Column 2 of said Table 1.7.1.1.,
	has entered into an agreement with an upper-tier municipality under the authority of Subsection of the BCA to enforce plumbing within the lower-tier
	municipalities that have an agreement with the upper- tier municipality under Subsection of the BCA,
	has under the authority of Subsection of the BCA, entered into an agreement with a lower-tier municipality to enforce plumbing when the lower-tier municipality is not part of an agreement with the upper-tier municipality under subsection of the BCA,
	has under the authority of Subsection of the BCA, entered into an agreement with a lower-tier municipality to enforce sewage systems, when the lower-tier municipality is not part of an agreement with the upper-tier municipality under Subsection of the BCA.
OR	and manufaction of the point
	be prescribed for the purposes of Subsection of the BCA, to enforce the provisions of the BCA and OBC related to sewage systems in Northern Ontario.
DR	a conservation authority which;
,	is prescribed in Division C, Column 1 of Table 1.7.1.1., for the purposes of Subsection of the BCA, to enforce the provisions of the BCA and OBC related to sewage systems in the municipalities and territory without municipal organization of Northern Ontario shown in Column 2 of said Table 1.7.1.1. of the OBC,
	has under the authority of Subsection of the BCA, entered into an agreement with a municipality to enforce sewage systems, when the municipality is not part of an agreement with the upper-tier municipality under Subsection of the BCA.

۷.	entities which may be a <i>principal authority</i> for purposes of the			
	Building Code Act.			
	,			
_				
-				

2 Consider Subsection 1 (1) of the BCA and name the six



THE ROLE OF THE COUNCIL OF THE MUNICIPALITY AS THE LOCAL GOVERNMENT

Section 2 of the *Municipal Act 2001*, S.O. 2001 c. 25 informs us that Municipalities are created by the Province of Ontario to be responsible and accountable governments with respect to matters within their jurisdiction and each municipality is given powers and duties under this Act and many other Acts for purposes which include,

- (a) providing the services and other things that the municipality considers are necessary or desirable for the municipality;
- (b) managing and preserving the public assets of the municipality;
- (c) fostering the current and future economic, social and environmental well-being of the municipality; and
- (d) delivering and participating in provincial programs and initiatives.

Council, as the local government, just like the federal government and each of the provincial governments has three roles to play:

- ✓ the representative role,
- ✓ the legislative role, and
- ✓ the executive role.

We will now examine each of council's roles within the context of the BCA.

DUTIES OF COUNCIL UNDER THE BCA

1. Representative Role

Under the representative role council has a duty to provide services. In the case of the enforcement of the BCA and the provisions of the OBC, the duty to provide the service has been assigned to the council of the municipality by Subsection 3.-(1) of the BCA. Council fulfills its responsibility by selecting the enforcement model that best suits the needs and means of the municipality. Council can delegate some of its authority under the BCA to the CBO.

2. Legislative Role

Under the legislative role council has the authority to legislate. According to Subsections 5.-(1) and (3) of the *Municipal Act*, S.O. 2001, c. 25, the powers of a municipality are to be exercised by its council and shall be exercised by by-law unless the municipality is specifically authorized to do otherwise. Using its authority to legislate, council has three compulsory things to do to fulfill its assigned responsibility to enforce the BCA and the OBC:

- within the context of Section 7, pass a "Municipal Building By-Law",
- to satisfy Section 7.1, establish and enforce a "Code of Conduct" for the CBO and the Inspectors it appointed, and
- "appoint a Chief Building Official and such Inspectors as are necessary" under the authority of Subsection 3.-(2) of the BCA.

In addition, council may delegate to the CBO, its authority to:

- a) appoint a RCA that is under agreement with the municipality, under Subsection 4.1-(3) of the BCA,
- b) make decisions for the implementation of a plans review agreement with other principal authorities, under Subsection 6.-(2) of the BCA, and
- c) enter into a conditional permit agreement under Subsection 8.-(3.1) of the BCA.

3. Executive Role

Under the executive role, council has a duty to manage the affairs of the municipal corporation. For the enforcement of the BCA and the OBC, council is to oversee the activities of staff, adopt enforcement policies and ensure that the municipality's financial and personnel resources are used as efficiently as possible in fulfilling its assigned responsibility to enforce the BCA and the provisions of the building code.

COUNCIL / STAFF RELATIONSHIP

The Council / Staff relationship and communications are important to accomplish the municipality's responsibility to enforce the BCA and the provisions of the OBC. Staff input to council on development of policies and procedures is just as important as reporting on activities. The following model relies on effective two-way communication and cooperation.

Facilitator/Self-Study Participant Note:

The decision making communication matrix is also of significance to a principal authority other than the council of a municipality.

In the decision making communication matrix on the following page, the three roles of council as the local government are shown in the middle column. The input of staff in the decision making and implementation processes is shown in the right hand column and the authority of council to decide and conclude is shown in the left column.

DECISION MAKING COMMUNICATION MATRIX

COUNCIL		STAFF
assig Decide o	REPRESENTATIVE ROLE enforce the BCA and the provision and by Subsection 3(1) of the Boundary to the Bubsections 4.1-(3), 6(2) and 8	CA. he CBO
		A) Advises
B) Decides	4	
	•	C) Executes
		D) Reports
F) Concludes	4	
Appoint Build	h a Code of Conduct under Sections Department Staff under Subscience its authority to the CBO Subsections 4.1-(3), 6(2) and 8	ection 3(2)
B) Decides / Enacts		A) Advises
B) Decides / Eriacis		C) Executes
		D) Reports
E) Concludes	4	D) Neports
Enforce a Co	EXECUTIVE ROLE Decide on enforcement model Oversee the activities of staff de of Conduct established under Adopt enforcement policies	Section 7.1
		A) Advises
B) Adopt and decides	*	
	•	C) Executes
		D) Reports
E) Concludes	*	

The importance of effective communications between staff and council by way of monthly and annual activity reports and on-going policy and procedure development cannot be overstressed. An informed council knows that Building Officials, RCA's and persons authorized by RCA's perform functions under the authority of a provincial statute and are bound by law not to deviate from their assigned powers and duties. The management of a Municipal Building Department is a dynamic exercise which requires ongoing monitoring and adjustment.

DUTIES OF A PRINCIPAL AUTHORITY UNDER THE BCA

Facilitator/Self-Study
Participant Note: A review
of Section 7 of the BCA
reveals that the instrument,
in the case of a local
municipality, upper-tier
municipality and a board of
health is a By-law; a
resolution in the case of a
planning board and a
regulation in the case of a
conservation authority and
the Lieutenant Governor in
Council.

After council has decided on the enforcement model the duties of the other principal authority under the BCA, mirror those of the council of the municipality. Consequently, the principal authority, other than the council of a municipality must:

- 1- enact a Instrument to deal with local matters,
- 2- appoint as the case may be:
 - a Chief Building Official
 - an Inspector or a Senior Plumbing Inspector who has the same powers and duties as a CBO in relation to plumbing
 - an Inspector or a Designated Inspector who has the same powers and duties as a CBO in relation to sewage systems
 - such Inspectors as are necessary
- 3- establish and enforce a Code of Conduct

Similarly to a municipality, the other principal authority may delegate to its CBO or the Inspector with the powers and duties of a CBO, as the case may be, its <u>authority</u> to do three things:

- a) appoint a RCA that is under agreement with the principal authority, under Subsection 4.1-(3) of the BCA,
- b) make decisions for the implementation of a plans review agreement with other principal authorities, under Subsection 6.-(2) of the BCA,
- c) not including plumbing permits by virtue of Subsection 6.1-(5) of the Act, enter into a conditional permit agreement under Subsection 8.-(3.1) of the BCA.

In the next exercise, we will look at the options available to the council of a municipality in selecting an enforcement model and what is provided by the BCA and prescribed in the Code for the enforcement of sewage systems in Northern Ontario. We will also examine the similarity of duties assigned by the BCA to each principal authority; but we will not look at the advantages and disadvantages of each enforcement model.



EXERCISE # 2 - THE PRINCIPAL AUTHORITY AND ITS DUTIES UNDER THE BCA

To answer the questions that follow you will need to consult the BCA. Subsections 3.-(3) to (6) for the enforcement of the Code by joint agreement between two or more local municipalities or by the upper-tier municipality under agreement with one or more of its local municipalities.

Section 3.1 for the enforcement of Part 8 Sewage Systems by a prescribed principal authority in Northern Ontario.

Section 6.1 for the enforcement of Part 7 Plumbing under an agreement with an upper-tier municipality or a board of health.

Section 6.2 for the enforcement of Part 8 Sewage Systems under an agreement with an upper-tier municipality, a board of health or a conservation authority.

Section 7 for the authority of a principal authority to enact an Instrument (a By-law, Resolution or Regulation as the case may be).

Section 7.1, the duty of every principal authority to adopt and enforce a Code of Conduct.

 Complete the following Table by inserting the BCA references that authorize the establishment of the enforcement model described in each Row of Column 2, the duty of each principal authority to enact an instrument called a by-law, resolution or regulation, as the case may be, the duty and authority to appoint staff and to establish and enforce a Code of Conduct. 6

8

9

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11

- OBC Enforcement Models - Authority and Duties of P. A. under the BCA -

	ODO Elliorecilient Models - A	utilority i	and Daties o	r. A. under un	C DCA -
MODEL	Description of enforcement model and identification of Principal Authority	BCA authority for model	BCA authority and duty of Principal Authority to enact an instrument	BCA authority and duty of Principal Authority to appoint staff	BCA authority and dufy of P A to establish and enforce a Code of Conduct
1	OBC enforced by municipality			*	
2	OBC enforced under agreement between two or more municipalities			*	
3	OBC enforced by upper-tier municipality under agreement with one or more of its municipalities			*	
4	Plumbing enforced by upper-tier municipality under agreement with one or more of its municipalities			**	
5	Upper-tier municipality with a model 4 agreement may delegate plumbing enforcement to the board of health		7	**	

7.-

7.-

7.-

Duty to appoint:

* a chief building official and such inspectors as are necessary

A municipality that is not party to a model 4 agreement may enter into agreement with the board of health to

Sewage systems enforced by uppertier municipality under agreement with one or more of its municipalities

A municipality that is not party to a model 7 agreement may enter into agreement with board of health or conservation authority to enforce

A board of health, planning board or conservation authority that has been prescribed to enforce sewage systems in municipalities of Northern Ontario and the unorganized area shown in Division

OBC enforced by Ontario under agreement with the municipality

OBC in unorganized territory enforced by adjacent municipality under

C. Column 2 of Table 1.7.1.1.

agreement with the Crown

enforce plumbing

sewage systems

^{**} plumbing inspector(s) & designate a senior plumbing inspector with the duties and powers of a CBO

^{***} sewage system inspector(s) and designate one with the duties and powers of a CBO

- When plumbing is being enforced by a Board of Health under agreement with an upper-tier municipality under Subsection 6.1-(2) of the BCA, the CBO and the Inspectors appointed by the municipality to enforce the other provisions of the OBC have;
 - a) less authority to enforce the other provisions of the OBC
 - b) more authority to enforce the other provisions of the OBC
 - c) joint authority with the Plumbing Inspectors of the Board of Health to enforce the provisions for sewage systems
 - d) no authority to enforce plumbing

BCA Reference:	

- 3. When the provisions of on-site sewage systems are enforced by a Conservation Authority under agreement with a municipality as authorized in Subsection 6.2-(2) of the BCA, the Chief Building Official and the Inspectors appointed by the municipality to enforce the other provisions of the Ontario Building Code have;
 - a) less authority to enforce the other provisions of the OBC
 - b) more authority to enforce the other provisions of the OBC
 - c) joint authority with the Sewage System Inspectors of the Conservation Authority to enforce plumbing
 - d) no authority to deal with the provisions for on-site sewage systems

BCA Reference:	
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- 4. In the Territorial Districts of Northern Ontario, the provisions of the OBC for on-site sewage systems are enforced by a principal authority prescribed in Division C, Section 1.7. Consequently the Chief Building Official and the Inspectors appointed by the Council of a Municipality have;
 - a) less authority to enforce the other provisions of the OBC
 - b) more authority to enforce the other provisions of the OBC
 - joint authority with the Sewage System Inspectors of the Board of Health to enforce plumbing
 - d) no authority to enforce the provisions for on-site sewage systems

RCA	Reference:		
DUM	TOTOLOG.		

- 5. Consider a municipality that has entered into an agreement with an upper-tier municipality to enforce the BCA and the provisions of the OBC under the authority of Subsection 3.-(5) of the BCA. When that is the case, jurisdiction lies with:
 - a) the local municipality
 - b) the upper-tier municipality
 - c) the single-tier municipality
 - d) the local municipality

BCA reference:	



As you just saw, different entities qualify to be called a principal authority. Specific circumstances would dictate who is the principal authority.

Facilitator Self-Study Participant Note. A RCA is similar in authority to a Building Inspector. Even if the RCA has some of the powers of a CBO, e.g. it may make a Stop Work Order under Subsection 14.-(1) or an Order to Uncover under Subsection 13.-(6) of the Act, to name a few. It is never a substitute to the CBO. The CBO is the only person with the authority to issue permits under Section 8 of the BCA, including the circumstances when a RCA is involved, as evidenced by Subsections 8.-(1) to 8.-(3) and Section 15.15 of the BCA.

ENFORCEMENT OF THE OBC WITH THE ASSISTANCE OF A REGISTERED CODE AGENCY

The amended *Building Code Act* gives rise to a new method of enforcement by empowering the principal authority to allow a new entity called a **Registered Code Agency (RCA or Agency)** to assist the CBO¹ by doing plans review and inspection activities and exercising certain powers of the CBO.

THE RCA APPOINTED BY A PRINCIPAL AUTHORITY

The involvement of a RCA is a two step approach.

Step 1. THE WRITTEN AGREEMENT

Under Subsection 4.1-(1) of the BCA, the principal authority is empowered to enter into an agreement with a RCA to perform specified functions in connection with the construction of any building or class of buildings as specified in the agreement.

Step 2. THE WRITTEN APPOINTMENT

As provided by Subsection 4.1-(2) of the BCA, after entering into the written agreement with the RCA, the principal authority is empowered to appoint the Agency to perform specified functions in respect of the construction of a building or class of buildings. The provisions of Section 4.1 of the BCA operates in tandem with those of Div. C, Section 3.7.

NOTA BENE: The term "class of buildings" found in the BCA is synonymous with the term "Type of Building" found in Div. C, Column 4 of Table 3.5.2.1. and Column 3 of Table 3.5.2.2. We will deal with the term "Type of Building" in Module Four Qualifications and Registration under the BCA and the OBC.

¹ The term CBO includes an Inspector who has the same powers and duties as the CBO in relation to sewage systems by virtue of Subsection 3.1-(3) or 6.2-(4) and in relation to plumbing by virtue of Subsection 6.1-(5), see Subsection 1-(1.3) of the *Building Code Act*.

EXERCISE #3 - A G R E E M E N T S W I T H A N D APPOINTMENT OF REGISTERED CODE AGENCIES - THE BASICS

To complete this exercise, you will need to consult Section 4.1 of the BCA which operates in tandem with Div. C, Section 3.7. of the Code. Remember to make the appropriate cross-reference notes in your copy of the BCA and the OBC. When prompted, support your answer with the appropriate references.

- According to the BCA, the authority to enter into an agreement with a RCA to perform specified functions, either before or after a permit is issued, with respect to the construction of a building or class of buildings lies with the;
 - a) Chief Building Official or the Inspector who has the same powers and duties as the CBO, as the case may be
 - b) Director of the Building and Development Branch of the Ministry of Municipal Affairs and Housing
 - c) Principal Authority having jurisdiction
 - d) prescribed person who is entitled to apply for a permit under Section 8 of the BCA

- The agreement between the RCA and the Principal Authority to perform specified functions in respect of the construction of a building or class of buildings;
 - a) must be in writing
 - b) may be in writing
 - c) may be delegated to the Chief Building Official
 - d) must be delegated to the Chief Building Official

ORC.	Reference:				
000	1 1010101100.				

Facilitator/Self-Study Participant Note: This permits the Principal Authority to appoint a RCA under agreement to perform all of the functions of plans examination or all of the functions of inspections or both. The work of the RCA is always corroborated by a "Certificate" provided to the CBO by the RCA. An RCA could not be appointed to perform only a partial plans examination or some of the inspections.

- According to the BCA, the Principal Authority or the CBO, as the case may be, may appoint a RCA under agreement, to perform specified functions in respect of the construction of a building or class of buildings;
 - a) only after a permit is issued under Section 10 of the BCA
 - either before or after a permit is issued under section 10 of the BCA
 - c) only after a permit is issued under Section 8 of the BCA
 - d) either before or after a permit is issued under Section 8 of the BCA

BCA	Reference:		



THE CODE OF CONDUCT FOR REGISTERED CODE AGENCIES

A Registered Code Agency is called upon by Div. C, Sentence 3.7.4.1.(2) to perform the functions specified in an appointment in accordance with the Code of Conduct set out in Supplementary Standard SC-1.

Matters concerning the enforcement of the Code of Conduct under Supplementary Standard SC-1 must be directed to the Director of the Building and Development Branch of the Ministry of Municipal Affairs and Housing.

THE CODE OF CONDUCT FOR CHIEF BUILDING OFFICIALS AND INSPECTORS

Each Principal Authority, is required by Subsection 7.1-(1) of the Act to establish and enforce a Code of Conduct for the Chief Building Official and Inspectors.

The Code of Conduct, which must be made public, applies to the Chief Building Official and the Inspectors in the exercise of a power or the performance of a duty under the BCA or the OBC and according to Subsection 7.1-(2) of the BCA, the purposes of the Code of Conduct are to:

- ✓ promote appropriate standards of behaviour and enforcement actions,
- ✓ prevent abuse of power and unethical or illegal practices,
- ✓ promote standards of honesty and integrity
- ✓ provide a procedure for responding to allegations that the Code of Conduct has been breached, and
- establish disciplinary actions that may be taken if the Code of Conduct is breached.

EXERCISE # 4 - THE CODE OF CONDUCT FOR REGISTERED CODE AGENCIES

Consult Div. C, Sentence 3.7.4.1.(2) and Supplementary Standard SC-1, "Code of Conduct for Registered Code Agencies".

1.	In the space provided, note any comments, questions of concerns. During the course, the facilitator will respond to an
	comment, question or concern you may have.
_	
_	
_	

- Consider SC-1 and Div. C, Article 3.7.4.6. An employee of a RCA, acting in good faith and on the basis of reasonable belief;
 - a) can be dismissed if he/she has talked to the Director of the Building and Development Branch of the Ministry of Municipal Affairs
 - b) cannot be dismissed if he/she has refused to do anything that is a contravention of the BCA or the OBC
 - c) can be dismissed if he/she has talked to an Advisor with the Building and Development Branch of the Ministry of Municipal Affairs about making and serving Orders under the BCA
 - d) cannot be dismissed if he/she has refused to do more than three (3) inspections per day

OBC Reference:		

3. Consider SC-1 and Sentences 3.7.6.3.(1) and (5) of the OBC. We are informed that a RCA in the course of carrying out functions under appointment must give notice to the CBO of the location of unsafe buildings and the reason why it believes the buildings are unsafe. In your own words, complete the following statement by identifying the buildings to which this provision applies.

A PCA under appointment is required to notify the CRO of the

OBC References: _

Facilitator/Self-Study
Participant Note: The
Municipal Freedom of
Information and Protection
of Privacy Act R.S.O. 1990
c. M.56 applies to records
of a municipality. All
requests for disclosure of
records must be directed to
the individual determined
to be the head under
Subsection 2.-(1) of the
Municipal Freedom of
Information and Protection
of Privacy Act.

- Consider the Information and Records provisions of SC-1, "Code of Conduct for Registered Code Agencies". A RCA is;
 - a) authorized to disclose records only in accordance with Div.
 C, Article 3.7.4.7. of the building code
 - authorized to disclose records only in accordance with the Municipal Freedom of Information and Protection of Privacy Act R.S.O. 1990 c. M.56
 - c) not under any obligation to disclose records and information
 - d) authorized to disclose records only in accordance with Div.
 C, Clause 3.4.3.3.(3)(h) of the OBC



EXERCISE # 5 - REVIEW OF MODULE TWO

This is a discussion exercise to review the subject matter contained in this module. In the space provided under each heading, note any comments, concerns or questions. During the course, the facilitator will respond to any comment, question or concern you may have.

The Principal Authority and Types of Municipalities

You were provided with the *Municipal Act* and concurring *Building Code Act* definitions for the different types of municipalities in Ontario.

The amended *Building Code Act*, makes use of the term **Principal Authority** to identify the various entities who may have the responsibility for the enforcement of the BCA and the provisions of the OBC or; the BCA and various provisions of the OBC. [Subsection 1.-(1) definition of principal authority]

Government	ii ot a	Municipality	as	tne	Local
Section 2 of the Municipal	Act wa	s reproduced.			

Duties of Council Under the Building Code Act

The Council of the Municipality is responsible for the enforcement of the BCA and the provisions of the OBC and must decide on an enforcement model. Council is also called upon to enact a Building By-law to deal with local matters, appoint staff, adopt policies and take measures to establish and enforce a Code of Conduct. It is also empowered to delegate some of its functions to the CBO.

Representative Role		
Legislative Role		
Executive Role		
	· · · · · · · · · · · · · · · · · · ·	

Council / Staff Relationship

The methods of communication are as varied as there are municipalities in Ontario. A Decision Making Communication Matrix was reviewed.

Duties of a Principal Authority, Other than the Council of a Municipality, Under the BCA

The duties of a Principal Authority other than the council of a municipality mirror those of the council of a municipality; enact an instrument, appoint staff and establish and enforce a Code of Conduct. A Principal Authority may delegate to its CBO or Inspector who has the powers and duties of a CBO in relation to plumbing or sewage systems, as the case may be, its authority to appoint a RCA [4.1-(3)], manage a plans review agreement [6.-(2)] and excepts for plumbing permits by virtue of Subsection 6.1-(5) of the Act, enter into a conditional permit agreement [8.-(3.1)].

Relationship Between Municipal or Upper-tier Staff and Staff Appointed by Another Principal Authority

When the BCA and the provisions of the building code related to plumbing or sewage systems are enforced by a Principal Authority other than the Council of a Municipality or Upper-Tier Municipality, the Chief Building Official and the Inspectors of the Municipality or Upper-Tier Municipality do <u>not</u> have the authority to exercise their powers in respect to plumbing or sewage systems, as the case may be.

Enforcement of the OBC with the Assistance of a Registered Code Agency

Section 4.1 of the BCA provides for the OBC to be enforced with the assistance of a new entity called a "Registered Code Agency" (RCA or Agency).

The RCA appointed by a Principal Authority

A Principal Authority is empowered to enter into an agreement with, and appoint an RCA to perform specified functions in connection with the construction of one building or type of building.

THE CODE OF CONDUCT FOR CHIEF BUILDING OFFICIALS AND INSPECTORS

Each Principal Authority is required by Section 7.1 of the BCA to establish and enforce a Code of Conduct for the Chief Building Official and Inspectors.

THE CODE OF CONDUCT FOR REGISTERED CODE AGENCIES

Similarly, Registered Code Agencies are required by Div. C, Sentence 3.7.4.1.(2) of the OBC to perform the functions specified in an appointment in accordance with the Code of Conduct for Registered Code Agencies set out in Supplementary Standard SC-1. Matters concerning the conduct of Registered Code Agencies must be directed to the Director of the Building and Development Branch of the Ministry of Municipal Affairs and Housing.

CONCLUSION

The *Building Code Act* assigns to the council of the municipality the responsibility to enforce the BCA and the provisions of the OBC and to decide on an enforcement model; except in the Districts of Northern Ontario where the Principal Authorities responsible for the enforcement of the BCA and the provisions of the OBC for sewage systems are prescribed in Div. C, Table 1.7.1.1.

In fulfilling its enforcement responsibility, a Principal Authority may enter into an agreement with and appoint a Registered Code Agency to assist the CBO.

Each Principal Authority is called upon by the BCA to enact an instrument to deal with local matters, appoint staff, adopt policies and take measures to establish and enforce a Code of Conduct. In turn, it may delegate in writing some of its discretionary authority to the CBO.



MODULE THREE - UNDERSTANDING ROLES AND THE LEGAL FRAMEWORK OF THE BCA



INTRODUCTION

Before initiating any procedure under the *Building Code Act*, it is essential for a practitioner to understand his/her role and have knowledge of the scope of application of the three main laws within which the building regulatory system in Ontario operates.

Under the *Constitution Act*, 1982, the Provinces of Canada are empowered to make laws for the construction of buildings. In Ontario, the <u>three main laws</u> that regulate the construction of buildings are:

- √ the Building Code Act (BCA).
- √ the Ontario Building Code (OBC), and
- ✓ the Municipal Building By-law (instrument).

Facilitator/Self-Study
Participant Note: *Simply
put, the LieutenantGovernor in Council is the
Lieutenant-Governor
acting in conjunction with
the Premier and the
Ministers of the Crown
(Cabinet).

The BCA is the keystone law. For example, in Section 34, it authorizes the *Lieutenant Governor in Council to make regulations governing standards for the construction and demolition of buildings, known as the Building Code and in Section 7 it empowers a Principal Authority to enact a By-law, Regulation or Resolution, as the case may be, to deal with matters relating to its area of jurisdiction.

OBJECTIVES

In this module you will:

- ★ examine the main features of the BCA and the activities it regulates,
- ★ identify the role of various BCA practitioners, which is not to be confused with their powers and duties, and
- ★ determine the purpose of the OBC, identify its constituent parts and determine how to establish the applicability of a requirement or provision,

Facilitator/Self-Study
Participant Note: Please
note that the 1992 BCA has
been amended twelve times
since 1992; see Module
One, page 6 for a listing of
the amendments.

THE BUILDING CODE ACT

The Building Code Act, S.O. 1992 c. 23, as amended, provides the legal framework for;

- 1- the construction of a building or part thereof,
- 2- demolition of a building or part thereof,
- 3- change of use of a building or part thereof, and
- 4- the authority to remedy unsafe buildings.

It also provides the legal framework for the enactment and administration of standards for the maintenance and occupancy of property. Property standards will not be addressed in this course.

In a nutshell, the BCA can be summarised as follows, it:

- authorizes the Province of Ontario to make the Building Code,
- ✓ assigns the responsibility for its enforcement to the council of each local municipality, empowers council to decide on enforcement model and requires council to:
 - appoint a Chief Building Official (CBO) and such Inspectors as are necessary,
 - pass a municipal Building By-law,
 - establish and enforce a Code of Conduct for staff,
 - adopt policies for dealing with the administrative processes of permits, orders and inspections,
- ✓ gives duties and powers and describes the role of practitioners and provides for their qualifications,
- ✓ affords the means of obtaining compliance for buildings that fail to comply with the BCA or the OBC,
- ✓ provides mechanisms to settle disputes; namely
 - reviews by the CBO
 - Building Code Commission (BCC) Rulings
 - Appeals to the Ontario Superior Court of Justice and further appeals to the Divisional Court
 - binding interpretations by the Minister

Facilitator/Self-Study
Participant Note:
References are not
provided at this time as we
will review each feature in
detail, as the course
progresses.

- contains mechanisms to authorize the use of innovative materials, systems and building designs not recognized in the OBC:
 - Authorizations by the Building Materials Evaluation Commission (BMEC)
 - Rulings by the Minister
- ✓ identifies offences and associated penalties that may be assigned to offenders by the courts.

EXERCISE # 1 - MINISTERIAL AND COUNCIL RESPONSIBILITIES UNDER THE BCA

To complete this exercise you will need to consult Subsections 1.-(1), 2.-(1), and 3.-(1) of the BCA. When prompted, provide references to support your answer. As you go along, you are reminded to write the cross-references in your copy of the Table of Contents to BCA, the Index of the OBC and your copy of the BCA and the Code.

- The responsibility for the <u>administration</u> of the BCA lies with the:
 - a) Council of the Municipality
 - b) Chief Building Official
 - c) Director of the Building and Development Branch
 - d) Minister of Municipal Affairs and Housing

BCA References:	

- 2. Except where otherwise provided by the Act, the responsibility for the enforcement of the BCA lies with the:
 - a) Council of the Municipality
 - b) Chief Building Official
 - c) Director of the Building and Development Branch
 - d) the Minister of Municipal Affairs

BCA References:	

STOP

ROLES OF BUILDING CODE ACT PRACTITIONERS

The legal responsibility for:

- the administration of the BCA lies with the Minister,
- the enforcement of the BCA lies with a Principal Authority, and
- exercising the duties and powers for the day-to-day administration and enforcement of the BCA and the provisions of the OBC lies with the appointed staff.

One objective of the amended BCA is to provide more certainty about what is expected of practitioners under the BCA. To that effect, new <u>Section 1.1 spells out the role of</u>:

- (1) persons who cause construction,
- (2) designers,
- (3) builders,
- (4) manufacturers, suppliers and retailers of building products,
- (5) registered code agencies,
- (6) chief building officials, and
- (7) inspectors.

Subsection 1.1-(8) goes on to informs us that;

Nothing in Section 1.1 relieves any person from the duty to comply with any part of this Act or the building code or affects the rights or duties of a person not mentioned in Section 1.1 in respect of the construction of a building.

Facilitator/Self-Study
Participant Note: The
manner in which the
references are indicated,
Subsection 1.-(1) and
Section 1.1 can be very
confusing and it is very
important that you read
carefully when transposing
or quoting references.

A review of Section 1.1 of the BCA reveals that persons who cause construction and builders have similar roles. The same can be concluded for registered code agencies and inspectors, as assistants to the CBO or the Inspector who has the same powers and duties as the CBO in relation to plumbing or sewage systems, as the case may be. The revised BCA also specifies the roles of chief building officials, designers, manufacturers, suppliers and retailers of building products.

NOTA BENE: the roles of BCA practitioners as stated in Section 1.1 of the BCA is <u>not</u> to be confused with their responsibilities, duties, powers and obligations found elsewhere in the BCA.

EXERCISE # 2 - THE ROLES OF BCA PRACTITIONERS

To complete this exercise, you will need to consult Subsection 1.-(1) "Definitions" and the Subsections of Section 1.1 "Role of ...". You are encouraged to review the BCA and OBC references that have been provided in any Table.

 Consider the role of a Chief Building Official (CBO) under Subsection 1.1-(6) of the BCA and in the space provided in the following Table, insert the appropriate BCA references.

Role of CBO, I/CBO-P* and I/CBO-SS* is to:	BCA reference
establish operational policies for enforcement of the BCA/OBC	
co-ordinate and oversee the enforcement of the BCA/OBC	
exercise powers and perform duties assigned to him/her under the BCA/OBC	
exercise powers and perform duties in accordance with the standards established by the applicable Code of Conduct	

^{*} Within the context of Subsection 1-(1.3), the same role applies to an Inspector who has the same powers and duties as the CBO in relation to sewage systems or plumbing, as the case may be.

NOTA BENE: Subsection 1.1-(6) applies to a CBO, I/CBO-P and I/CBO-SS who is an Architect or Professional Engineer.

	The Holle And the Leave House Holle Con the Lago o
2.	A Chief Building Official is a person who is appointed by the Council of a Municipality or Upper-Tier Municipality under the authority of Subsection;
	a) 3(2) or 3(6) of the BCA as the case may be
	b) 3(2), 3(6) and 4(5) of the BCA as the case may be
	c) 6.1-(4) and (5) of the BCA in the case of plumbing
	d) 6.2-(3) and (4) of the BCA in the case of sewage systems
	BCA References:
3.	Where there is more than one inspector in the area of jurisdiction, the responsibility to designate the Inspector with the powers and duties of a CBO in relation to sewage systems when an agreement under Subsection 6.2(2) exists, lies with the:
	a) council of the municipality,
	b) the council of the upper-tier municipality
	c) the council of the upper-tier municipality, the board of health or the conservation authority as the case may be
	d) the board of health or the conservation authority as the

case may be

BCA reference:

Facilitator/Self-Study
Participant Note for
Ouestion # 4: Under the
BCA, only persons who
have the qualifications set
out in Div. C. Clause
3.4.3.2.(1)(a) are entitled to
sign certificates on behalf
of a RCA, as evidenced by
Div. C. Sentence
3.7.4.3.(1).

4. Consider the role of an Inspector under Subsection 1.1-(7) of the BCA and that of a Registered Code Agency under Subsection 1.1-(5) and in the space provided in the Table, insert the appropriate BCA references. You are asked to consult the building code references that have been provided and insert the appropriate cross-references in your copy of the BCA and OBC. In the case of a Registered Code Agency its role and functions are synonymous.

Role of RCA and Inspector* is to exercise powers and perform duties under the BCA and the OBC in connection with:	BCA reference for RCA	BCA reference for Inspector
reviewing plans		
issuing certificates		(1)
inspecting construction		
other functions in accordance with the BCA [see Paragraph 15.15(1) 6.] and the OBC [see Div. C, Sentences 3.7.3.1.(1) and 3.7.4.3.(5)]		(1)
making orders [see BCA Subsections 13(6), 14(1) and 15.17-(3)	not specified at Subsection 1.1-(5)	
and to exercise powers and perform duties		
in respect of only those matters for which he/she/it is qualified under the BCA and the OBC		
in accordance with the standards established by the applicable Code of Conduct	see Div. C 3.7.4.1.(2)	

^{*} This role applies to all types of Inspectors.

NOTA BENE: Subsections 1.1-(5) and (7) apply to an Inspector and RCA who is an Architect or Professional Engineer.

Facilitator/Self-Study
Participant Note: A
reminder, to enhance the
Table of Contents of your
copy of the BCA and the
OBC by writing-in the
cross references for
important links between the
requirements of the BCA
and those of the OBC.

NOTA BENE: A board of health and conservation authority are NOT empowered to appoint a CBO.

- An Inspector is a person who is appointed by a Principal Authority under the authority of Subsection;
 - a) 3.-(2) of the BCA
 - b) 3.-(2) or 3.1-(2) of the BCA as the case may be
 - c) 3.-(2), 3.1-(2) or 6.1-(4) of the BCA as the case may be
 - d) 3.-(2), 3.1-(2), 6.1-(4) or 6.2-(3) of the BCA as the case may be

⁽¹⁾ The provisions of Column 1 do not apply to Inspectors.

6.	According to the BCA, a Regis that has the qualifications described in Subsection;		-	
	a) 15.11-(1) of the BCA			
	b) 15.11-(2) of the BCA			
	c) 15.11-(3) of the BCA			
	d) 15.11-(4) of the BCA			
	BCA Reference:			

 Consider the role of a Designer under Subsection 1.1-(2) of the BCA and in the space provided in the Table, insert the appropriate BCA references.

When designs[see BCA Subsection 15.11-(6)] are to be submitted in support of a permit under the BCA, it is the Role of Designer to:	BCA reference
provide designs which are in accordance with the BCA and the OBC	
provide documentation that is sufficiently detailed to permit the design to be assessed for compliance with the BCA and the OBC	
provide documentation that is sufficiently detailed to allow the builder to carry out the work in accordance with the design, the BCA and the OBC	
perform the role described in Clause 1.1-(2)(a) in respect of only those matters for which the designer has the qualifications, if any required by the BCA and the OBC	
If the OBC [Div. C, Subsection 1.2.2.] requires a general review of the design or construction the designer shall only perform the general review for those matters for which he/she has the qualifications, if any, required by the BCA and the OBC	

NOTA BENE:

Subsection 1.1-(2) does not apply to a designer who is an Architect or Professional Engineer. See Divisional Court Disposition paragraphs [77] and [79].

8.	For purposes of the qualifications of a designer under the BCA a design includes:
_	
	BCA Reference:

Consider the roles of persons who cause buildings to be constructed and builders and in Columns 2 and 4 of the Table, insert the appropriate BCA references.

Role of every Person who causes construction* is to:	BCA reference	Role of Builder* is to:	BCA reference
cause the building to be constructed in accordance with		construct the building in accordance with the permit	
the BCA, OBC and the Permit issued under the BCA		use appropriate building techniques to achieve compliance with the BCA and the OBC	
		notify the designer and an Inspector or RCA, as appropriate, when site conditions affect compliance with the OBC,	
ensure that construction does not proceed unless any permit required by the BCA has been issued by the CBO		ensure that construction does not proceed unless any permit required by the BCA has been issued by the CBO	
ensure that construction is carried out only by persons with qualifications and insurance, <u>if</u> <u>any</u> (1), required by the BCA and the OBC		(2)	

- * BCA 8.-(11) No person shall construct or demolish a building or cause a building to be constructed or demolished except in accordance with the BCA and the OBC.
- ⁽¹⁾ As a general rule, the BCA and the OBC do <u>not</u> require the builder to have any qualifications nor insurance.
- (2) As an exception to the general rule, firms engaged in the business of constructing on site, installing, repairing, servicing, cleaning or emptying sewage systems are required to become registered with the Director [Div. C, Clause 3.3.3.1.(1)(a) and have qualified installer supervisors on staff [Div. C, Clause 3.3.3.2.(1)(a)].

NOTA BENE: Clause 1.1-(1)(c) does not apply to a designer who is an Architect or Professional Engineer.

- 10. According to the BCA, it is the role of manufacturers, suppliers and retailers of products that are intended for use in Ontario in the construction of a building for a purpose that is regulated by the BCA and the provisions of the OBC to ensure that:
 - a) construction does not proceed unless any permit required under the BCA has been issued by the CBO
 - b) the designer has the necessary qualifications under the BCA and the OBC
 - c) the CBO or the Inspector, as the case may be has the necessary qualifications under the BCA and the OBC
 - d) the products comply with the standards established under the BCA and the OBC

BCA F	Reference:	
	torororo.	

STOP

THE ONTARIO BUILDING CODE

Facilitator/Self-Study Participant Note: Please note that O. Reg. 350/06. as amended to July 1, 2007 is the version that we use in this course, see page 6 of Module One.

Subsection 1.-(1) of the BCA inform us that the building code is a regulation of Ontario made under the authority of Section 34 of the BCA, governing standards for the construction and demolition of The 2006 Building Code is Ontario's first to be buildings. published in an objective-based format; and, is known as Ontario Regulation 350/06 as amended.

It is important to note that according to Subsection 34.-(5) of the BCA, the purposes of the OBC is to establish standards for:

- public health and safety,
- fire protection.
- ✓ structural sufficiency
- conservation and environmental integrity.
- ✓ barrier-free requirements with respect to buildings; and,
- √ to establish processes for the enforcement of the standards and requirements.

The third paragraph of the Preface of "2006 Building Code Compendium" informs us that the **OBC** is a set of **minimum provisions** and that the OBC is **not intended to be a textbook on building design**, advice on which should be sought from professional sources. Consequently, information on topics related to building design are more appropriately obtained from professional sources rather than from the Building and Development Branch. Ontario's 2006 objective-based building code is organized in three Divisions.

Division A defines the scope of each Division and the application of the 12 Parts of Division B. Division A contains the objectives, functional statements and the conditions necessary to achieve compliance.

Division B contains the acceptable solutions in Parts 1 to 12, the prescriptive and performance based provisions of Parts 3 to 11 of the 1997 Code. The acceptable solutions satisfy the objectives and functional statements of the 2006 Code.

Division C contains most of the administrative provisions that were previously found in Parts 1 and 2.

The 2006 Code retains the decimal numbering system that was used in the 1997 Code. To complete this exercise, you will need to consult Subsection 1.-(1) of the Act and pages **i** to **ri** of the Preface of Volume I of the 2006 Building Code Compendium.

EXERCISE#3 - DIVISIONS, PARTS, NUMBERING SYSTEM & EFFECTIVE DATE OF ONTARIO'S 2006 OBJECTIVE-BASED BUILDING CODE

- 1. Within the building regulatory system of Ontario, the OBC is a;
 - a) set of guidelines
 - b) regulation
 - c) set of policies
 - d) statute

		course, the facili concern you ma		nd to a	ny comment,
Division Statement		Compliance,	Objectives	and	Functional
Div. A, Par	t 2 -				
Div. A, Par	t 3 -				
		ceptable Soluti			
Div. B, Par	t 1 -				

2. For each Part of each Division, write in the title; and, in the space provided, write any comment, question or concern.

	Division C, Administrative F	Provisions
	Div. C, Part 3	
Facilitator / Self-Study Participant Note: Consult	name of the decimal num	ling code requirement, write in the bering reference and the title of the ments that are untitled are identified
page vi of the Preface to the 2006 Building Code	3.	
compendium for an example of the decimal	3.4.	
umbering system of Sub- ubclauses and Paragraphs.	3.4.2.	
aragraphs.	3.4.2.1.	
	3.4.2.1.(2)	requirement is untitled
	3.4.2.1.(2)(b)	requirement is untitled
	3.4.2.1.(2)(b)(i)	requirement is untitled

AND	ING ROLES AND THE LEGAL FRAMEWORK OF THE BCA - Page 15
4.	The current edition of the OBC, Ontario Regulation 350/06 came into force on:
	a) April 6, 1998
	b) December 31, 2006
	c) January 1, 2007
	d) March 31, 2007
	OBC Reference:
5.	When a new OBC regulation comes into force, the rules for

revocation, commencement and transition can be found in:

- a) Div, C, Part 4 of the BCA
- b) Div. C. Part 4 of the OBC
- c) Div. C, Section 4 of the BCA
- d) Div. C. Section 4 of the OBC

6.	Consider the transition Rules of Div. C, Article 4.1.1.1. and in
	the space provided, insert any comment, question or concern
	that you want to discuss during the delivery of the course.

- 7. Article 1.3.1.2. of Division A by way of Table 1.3.1.2. of Division B informs us that the CCBFC. National Farm Building Code of Canada 1995 is used for the construction of farm buildings:
 - a) in tandem with the 1997 Code, O. Reg. 403/97 as it read on December 30, 2006
 - b) in tandem with the 2006 Code, O. Reg. 350/06 as it read on December 31, 2006
 - c) without the 1997 Code, O. Reg. 403/97 as amended
 - d) without the 2006 Code, O. Reg. 350/06 as amended

STOP

OBC reference: _____

REFERENCING THE PROVISIONS OF THE 2006 CODE

As you saw in the previous exercise, the decimal numbering system illustrated on page vi of the Preface to the 2006 Building Code Compendium has been retained from the 1997 Code. However, it will be necessary to specify the Division reference.

For ease of reference, Code users need to add the word "Division" or the short form "Div." and the Divisions alphabetical designation in front of a Code reference. For clarity, Code provisions should be referenced as follows:

- ✓ Division A, Sentence 1.3.1.1.(1) [which deals with Designated Structures]
- ✓ Div. B, Sentence 1.3.1.1.(1) [which deals with the effective dates of documents referenced in Table 1.3.1.2. of Division B]
- ✓ Div. C, 1.3.1.1.(1)

 [which deals with exemptions from the requirement for a permit under Section 8 of the BCA]

An Appendix Note reference should be written as follows:

- ✓ Division A, A-1.1.2.
 [Limit of Application]
- ✓ Div. B, Appendix A-1.1.2.1.(2) [Winter Design Temperatures]
- ✓ Div. C, A-1.2.1.1.(3)

 [Requirement for an Architect]

Appendix A is organized under three headings as follows:

Explanatory Material for Division A

Explanatory Material for Division B

Explanatory Material for Division C

CROSS-REFERENCES WITHIN A DIVISION

Div. A, Sentence 1.1.1.4.(1) states:

"If a provision of this Code contains a reference to another provision of this Code but no Division is specified, both provisions are in the same Division of this Code".

In other words, if a Division is not specified, the reference is in the same Division. For example, Div. B, Sentence 3.4.6.9.(6) states:

"If a horizontal exit utilizes bridges between buildings or outside balconies, the bridges or balconies shall conform to Article 3.2.3.19."

The Division is not specified for Article 3.2.3.19., which means that this Article is in the same Division as Sentence 3.4.6.9.(6), that is in Division B.

The same convention applies to Appendix A. For example, at the end of Div. B, Sentence 3.1.2.1.(1) appears the following Note: (See Appendix A.). This means that you may consult Appendix A, Explanatory Material for Division B at A-3.1.2.1.(1) Major Occupancy Classification.

CROSS REFERENCES ACROSS DIVISIONS

When a provision to another Division is referenced in the 2006 Code, the name of the other Division is stated with the reference. For example, Div. B, Sentence 9.1.1.1.(1) States:

"The scope of this Part shall be as described in Subsection 1.1.2. of Division A."

CHANGES FROM THE 1997 CODE

The 1997 Code was organized into 12 Parts. Part 1, Scope and Definitions etc... The administrative provisions were mostly found in Parts 1, 2 and 12 and the technical provisions were located in Parts 3 to 11.

The majority of the provisions from the 1997 Code are maintained in the 2006 Code. The administrative provisions can be found in Division A, B and C and in the Supplementary Standards. The figure on the next page of this manual provide you with a general idea of where the provisions of the 1997 Code are in the 2006 Code.

ORGANIZATION OF THE 2006 OBJECTIVE-BASED CODE

The 2006 Building Code Compendium comes in two volumes.

Volume I includes the preface which contains an Introduction, an overview of the objective-based code format and a synopsis of its development. The preface, also known as the front matter also contains highlights of major changes between the 1997 Code and the 2006 Code and a "Guideline for Requesting Changes to the Building Code" and a "2006 Building Code Change request Form". A Table of Concordance shows where the administrative requirements from Parts 1 and 2 of the 1997 Code were relocated to in the 2006 Code. Volume I also contains the Index.

Volume II contains the *Building Code Act*, Appendix A, Explanatory Material for Divisions A, B and C, Appendix B, Imperial Conversions of Metric Values and SI (metric) Units and their Multiples, Supplementary Standards SA-1, SB-1 to SB-11 and SC-1. The Supplementary Standards supersede the former Supplementary Guidelines. The Supplementary Standards with the prefix SA are referenced by Division A, those with the SB prefix by Division B and those with the SC prefix by Division C. Volume II also contains the Index.

DIVISION A - COMPLIANCE, OBJECTIVES AND FUNCTIONAL STATEMENTS

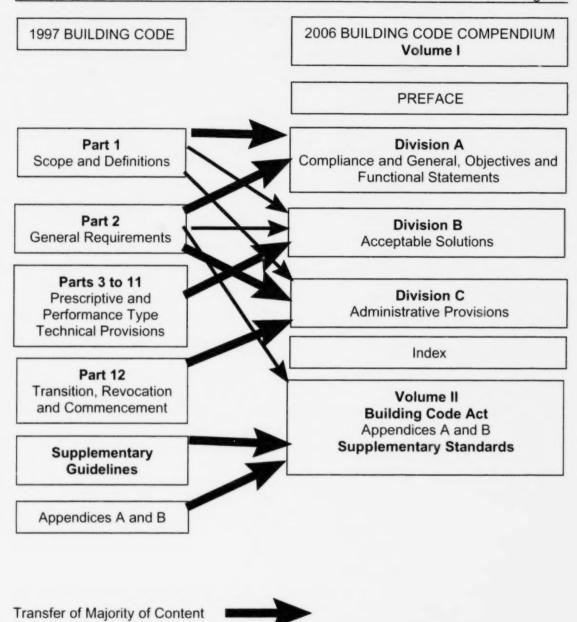
Division A contains most of the material that is unique to the new Objective-Based Code, as well as the Scope of each Division and the application of the 12 Parts of Division B.

Division A has three Parts:

Part 1 Compliance and General

Part 2 Objectives

Part 3 Functional Statements



Transfer of Some Content •

Division A, Part 1, "Compliance and General" describes how to achieve compliance with the Code. Div. A, Article 1.2.1.1. clarifies the same two compliance options that were offered by the 1997 Code.

 Comply with Division B (the technical provisions of the 2006 Code) by complying with the acceptable solutions of Division B.

[Div. A, Clause 1.2.1.1.(1)(a)]

 Comply with Division B (the technical provisions of the 2006 Code) by using an alternative solution (called an equivalent in the 1997 Code) that will achieve at least the level of performance required by the applicable acceptable solutions (technical provisions or requirements) of Division B.

[Div. A, Clause 1.2.1.1.(1)(b)]

Compliance with the use of alternative solutions will be examined in greater details in Module 12. Division A, Part 1 includes Subsections and Articles entitled:

Characteristics of Materials, Appliances, Systems and Equipment", [Div. A, Article 1.2.2.1.]

"Designated Structures", [Div. A. Article 1.3.1.1.]

"Farm Buildings", [Div. A, Article 1.3.1.2.]

"Definitions of Words and Phrases", [Div. A, Subsection 1.4.1.]

"Definition of Applicable Law", [Div. A, Article 1.4.1.3., see Sentences (1) and (2)]

"Symbols and Other Abbreviations" [Subsection 1.4.2.]

"Referenced Documents" [Subsection 1.5.1.]

Division A, Part 2, "Objectives" contains the list of objectives, in Table 2.2.1.1., that the technical provisions of the Code are intended to achieve.

The 2006 Building Code has seven categories of objectives:

OS Safety

OH Health

OA Accessibility

OP Fire, Structural, Water and Sewage Protection of Buildings

OR Resource Conservation

OE Environmental Integrity

OC Conservation of Buildings

For example, in Div. A, Table 2.2.1.1. Objective OS states:

"An objective of this Code is to limit the probability that, as a result of the design or construction of a building, a person in or adjacent to the building will be exposed to an unacceptable risk of injury."

Division A, Part 3, "Functional Statements" contains the list of functional statements in Table 3.2.1.1. that relate to the technical provisions of the Code.

For example, in Div. A, Table 3.2.1.1. Functional Statement F01 states:

"To minimize the risk of accidental ignition."

Functional Statements and Objectives are used together in the assessment of Alternative Solutions. This process will be dealt with in Module 12.

DIVISION B - ACCEPTABLE SOLUTIONS

Acceptable Solutions is a new term for the technical provisions or requirements of Division B. The terms "acceptable solution", "Division B provision" and "Division B requirement" are synonymous and interchangeable. Division B has 12 Parts.

Division B, Part 1, "General" contains the Application, Climatic Data, Referenced Documents and Organizations Subsections.

Division B, Part 2 is reserved. The provisions of Part 2 of the 1997 Code were moved into pieces to Divisions A, B and C and the Supplementary Standards. The Preface contains a Table of Concordance which shows where the administrative requirements from Parts 1 and 2 of the 1997 Code were relocated to in the 2006 Code.

Division B, Parts 3 to 11 are similar to the technical requirements of Parts 3 to 11 of the 1997 Code.

Division B, Part 12, "Resource Conservation regulates the mandatory and enabling energy efficiency requirements, and insulation in residential (see also Div. B, Section 9.25.) and non-residential buildings.

DIVISION C - ADMINISTRATIVE PROVISIONS

The four Parts of Division C

Division C, Part 1, "Administrative Provisions" confirm that the Code must be administered in conformance with the BCA. It contains the requirements for:

- ✓ General Review by an Architect, a Professional Engineer or both, [Div. C. Section 1.2.]
- ✓ Permits and Inspections which includes:
 - Requirement for Permit, [Div. C, Article 1.3.1.1.]
 - Applications for Permits under Section 8 of the Act, [Div. C. Article 1.3.1.2.]
 - Period Within Which a Permit is Issued or Refused, [Div. C, Article 1.3.1.3.]
 - Permits under Section 10 of the Act, [Div. C, Article 1.3.1.4.]
 - Conditional Permits, [Div. C, Article 1.3.1.5.]
 - Site Documents, [Div. C, Subsection 1.3.2.]
 - Occupancy of Unfinished Building, [Div. C, Subsection 1.3.3.]
 - Fire Department Inspection, [Div. C. Subsection 1.3.4.]
 - Notices and Inspections, [Div. C, Subsection 1.3.5.]

- Orders (prescribed), [Div. C, Article 1.3.5.6.]
- As Constructed Plans, [Div. C, Subsection 1.3.6.]
- Search Warrant, [Div. C. Section 1.4.]
- Enforcement of the Provisions of the Act and Building Code Related to Sewage Systems (in Northern Ontario), [Div. C, Section 1.7.]
- Language Used on Required Signs, [Div. C, Article 1.8.1.1.]
- Fees (for permits) [Div. C, Section 1.9.]

Div. C, Part 2, "Alternative Solutions, Disputes, Rulings and Interpretations" deals with the required document for Alternative Solutions, provisions for the Building Code Commission and the Building Materials Evaluation Commission, Minister's Rulings and Interpretations by the Minister.

Div. C, Part 3, "Qualifications deals with the qualifications for:

- ✓ Chief Building Officials, [Div. C, Section 3.1.]
- ✓ Inspectors, [Div. C, Section 3.1.]
- ✓ Designers engaged in the Business of providing design activities to the public, [Div. C, Section 3.2.]
- ✓ Other Designers who are not engaged in the business of providing design activities to the public or who are exempt from registration, [Div. C, Section 3.2.]
- ✓ Persons engaged in the business of constructing on-site, installing, repairing, servicing, cleaning or emptying sewage systems, [Div. C, Section 3.3.]
- ✓ Registered Code Agencies, [Div. C, Section 3.4.]

Div. C, Section 3.5. deals with the Classes of Registration and Categories of Qualifications for the above noted Building Code Act Practitioners. Section 3.6. deals with the insurance requirements for Designers engaged in the business of providing design activities to the public and Registered Code Agencies. In turn, Section 3.7. contains provisions for the appointment of Registered Code Agencies and prescribes procedures for carrying out the functions which it was appointed to do.

Div. C, Part 4, "Transition, Revocation and Commencement" contains the provisions of Part 12 of the 1997 Code as the are applicable to the 2006 Code and the amendments thereto.

In the space provided, note any concern, question or comment which will be addressed by the facilitator during the course.

Facilitator/Self-Study Participant Note: To establish which edition or amendment to the OBC applied to a situation that happened in the past you have to consider the effective date of the Regulation and the "Transition Rules" of Part 12.

HISTORY OF AMENDMENTS TO THE OBC

The provisions of a new or amended version of the OBC are not retroactive. For example, when the first edition of the Ontario Building Code became effective on December 31, 1975, the buildings that were constructed prior to that date did not have to be upgraded to satisfy the provisions of the new OBC. Since 1975 the OBC received numerous amendments and new editions of the Ontario Building Code were released in 1983, 1986, 1990, 1997 and 2006. See page **xrii** of the Preface.

To obtain the history of the OBC from 1975 to the present, consult the Building Code Website www.ontario.ca/buildingcode. Left click on "Publications" go down the menu and left click on "1975-1997 Ontario Building Code History". This list contains the amendments to the OBC from 1975 to 1997. To obtain the list of the amendments to the 1997 building code, Ontario Regulation 403/97, left click the "back button" then scroll the menu and left click on "Amendments to the 1997 Ontario Building Code".

In the space provided, note any concern, question or comment which will be addressed by the facilitator during the course.

BY-LAWS, RESOLUTIONS AND REGULATIONS (INSTRUMENTS) UNDER SECTION 7 OF THE BUILDING CODE ACT

The Instrument enacted by a Principal Authority under the provisions of Section 7 of the *Building Code Act*, is called a Bylaw, Resolution or regulation, as the case may be. The purpose of the Instrument is to prescribe legal administrative requirements that are unique to the geographic area of the Principal Authority. The words "may pass by-laws", "may pass resolutions" and "may make regulations" in Section 7 of the Act, do not mean that the Principal Authority does not require a by-law, resolution or regulation but that the Principal Authority may select from the enabling authority of Clauses 7.-(1)(a) to (j), those matters it wishes to regulate. For instance, a Principal Authority could decide not to enact operative clauses to deal with "as constructed plans" as enabled by Clause 7.-(1)(g) of the BCA. The operative clauses of the Instrument are limited to the following nine subjects:

- ✓ classes of permits,
- ✓ applications for permits, (occupancy permits under Div. C, Sentence 1.3.3.1.(1) and change-of-use under Section 10 of the Act only) other than the prescribed form, and the plans, specifications, documents and other documents to accompany an application under Section 8 and 10,
- √ fees for permits,
- ✓ refund of permit fees,
- ✓ time notices for inspections, under the additional notice provisions of Div. C, Article 1.3.5.2.,
- ✓ use of forms, other than prescribed forms,
- ✓ authority to request as built drawings,
- ✓ the transfer of a permit to a new owner; and,
- ✓ the fencing of construction and demolition sites.

You may wish to consult "A Guide to Preparing a Municipal Building By-law" on the Building Code Website www.ontario.ca/buildingcode and left click on "Publications" and scroll down the menu and select "Guides" and then select "Guide to Preparing a Municipal By-law".

While you will not be tested on the drafting of an Instrument for enactment by the Principal Authority, the information is within the "need to know" category of information for a Chief Building Official and others that could be called upon to provide assistance to the Principal Authority by drafting a By-law, Resolution or Regulation, as the case may be, or an amendment thereto. The Guide will be given further consideration at Module Thirteen.

Facilitator Self-Study Participant Note: R. L. Radford, Senior Solicitor for the Ministry advised that Council must pass a by-law under Subsection 5.-(2), now Section 7, of the BCA setting up a permit system. Here the wording of the BCA is permissive in that the BCA says "The council of a municipality may pass by-laws" but all that really means is that council can select among the topics in the Section those for which it thinks it needs by-laws.

NOTA BENE: Expect to be tested on Section 7 of the Act and the effect of an Instrument on the building regulatory process.

EXERCISE #4 - THE BUILDING BY-LAW, RESOLUTION AND REGULATION ENACTED UNDER SECTION 7 OF THE BUILDING CODE ACT

To complete this exercise, you will need to consult, from the BCA, Sections 7 "By-laws, Resolutions, Regulations", 35 "Municipal Bylaws" and 35.1 "Status of Conservation Authority Regulations".

- The authority to enact an Instrument under Section 7 of the BCA lies with;
 - a) the Chief Building Official or the Inspector who has the same powers and duties as the Chief Building Official
 - b) the Director appointed under Section 2 of the Act
 - the Minister of Municipal Affairs and Housing who is responsible for the administration of the Act
 - d) the Principal Authority

DOA	D-6			
BCA	References:			

Facilitator/Self-Study
Participant Note for
question # 2: To
understand the distinction
in the meaning of the word
"regulation". consult the
definition section of Part
III of the Legislation Act.
2006, S.O. 2006, chapter
21 Schedule F on the eLaws website or page 13 of
Module One.

Facilitator/Self-Study Participant Note for question #3: The OBC supersedes all municipal by-laws respecting standards for the construction or demolition of buildings. Such by-laws. both past and present are of no effect. Principal Authorities may not circumvent Section 27 now 34, of the BCA by enacting by-laws under the guise of other matters e.g. fire protection, which in effect regulate construction or demolition. (Minto Construction Ltd. v. Gloucester, 1979, D. C.) 8 M.P.L.R. 172

- The instrument enacted by a Conservation Authority, under the authority of Section 7 of the BCA, is referred to as:
 - a) a resolution
 - b) a regulation
 - c) a regulation that is not a regulation within the meaning of the Regulations Act
 - d) a by-law

BCA References:

- Municipal by-laws respecting standards for the construction or demolition of buildings:
 - a) supersede the BCA and the OBC
 - b) are complementary to the BCA and the OBC
 - c) are illegal
 - d) are superseded by the BCA and the OBC

BCA Reference: ____

- 4. The authority of the council of a municipality to pass a Building By-law under Section 7 of the BCA;
 - a) includes the authority to amend the meaning of terms defined in Subsection 1.-(1) of the BCA
 - b) does not include the authority to amend the meaning of terms defined in Subsection 1.-(1) of the BCA
 - may include the authority to amend the meaning of terms defined in Subsection 1.-(1) of the BCA if the local conditions in the municipality warranted such modified meaning
 - d) includes the authority to amend the meaning of terms defined in Subsection 1.-(1) of the BCA when warranted by local conditions

Reason for choice of answer:

STOP

EXERCISE # 5- REVIEW OF MODULE THREE

This is a discussion exercise to review the subject matter of this module. In the space provided, under each heading, note any comments, concerns or questions. During the course, the facilitator will respond to any comment, question or concern you may have.

The Building Code Act

The Role of BCA Practitioners

The roles specified in Subsection 1.1 are not to be confused with the duties and powers of BCA Practitioners found elsewhere in the Act.

Persons who cause construction [BCA Subsection 1.1-(1)]	

Designers [BCA Subsection 1.1-(2)]
Builders [BCA Subsection 1.1-(3)]
Manufacturers, Suppliers and Retailers of building products [BCA Subsection 1.1-(4)]
Registered Code Agencies [BCA Subsection 1.1(5)]
Chief Building Officials [BCA Subsection 1.1-(6)]
Inspectors [BCA Subsection 1.1-(7)]

Limitation Nothing in Section 1.1 of the BCA relieves any person from the duty to comply with any part of the Act or the Code or affects the rights or duties of a person not mentioned in Section 1.1 in respect of the construction of a building. [BCA Subsection 1.1-(8)]
The Ontario Building Code Its purpose is found in Subsection 34(5) of the BCA. You have investigated the organization of the Code in three Divisions of the OBC, its decimal numbering system and the effective date the regulation and amendments thereto become effective in consideration of the Rules for Transition, Revocation and Commencement. We have also examined the new way or referencing and cross-referencing the provisions of the 2006 Objective-Based Code.
History of Amendments to the OBC [see Building Code Website under Publications or page xrii of the Preface of the 2006 Building Code Compendium]

By-laws, Resolutions and Regulations (instruments) under Section 7 of the Building Code Act

Its purpose is to establish legal requirements that are specific to the area under the jurisdiction of the Principal Authority as empowered and limited by Section 7 of the BCA. [see A Guide to Preparing a Municipal Building By-law under Publications at the Building Code Website]

CONCLUSION

In this Module, you were provided with an overview of the three main documents that you will be working with, the BCA, the OBC and the By-law, Resolution or Regulation, as the case may be, of the Principal Authority. In Module Five, we will give consideration to the applicable laws" that have to be considered because they could have an effect on the decision of the CBO whether to issue the permit or to refuse to issue it. In each case, the decision will be based on the Building Department Staff's understanding and application of written words.

REMEMBER, decisions made under the authority of the BCA are subject to review and appeal processes as evidenced by:

- ✓ Subsection 14.-(8) "Powers of Chief Building Official",
- ✓ Subsection 22.-(1) Review of Inspector's Orders
- ✓ Section 24 "Dispute Resolution" by the Building Code Commission, and
- ✓ Section 25 "Appeal to Court" (Ontario Superior Court of Justice) and Section 26 "Further Appeal" (to the Divisional Court).

MODULE FOUR - QUALIFICATIONS AND REGISTRATION UNDER THE BCA AND THE OBC

INTRODUCTION

Div. C, Sentence 3.1.1.1(1), by way of Subsections 15.11-(1) to (3) of the *Building Code Act* provides that, **unqualified** Chief Building Officials, **unqualified** Inspectors who have the same powers and duties as a chief building official in relation to plumbing or sewage systems and **unqualified** Inspectors are not eligible for appointment and are not to remain appointed.

Inspectors with partial qualifications may be appointed if enrolled in an internship program approved by the Minister, under Div. C, Article 3.1.4.2.

Similarly, Div. C, Sentence 3.4.3.1.(1), by way of Subsection 15.11-(4) of the BCA informs us that a person is not eligible to be appointed as a RCA under the BCA unless he, she or it is registered with the Director.

In the case of Designers, Div. C, Sentence 3.2.1.1.(1), by way of Subsection 15.11-(5) of the Act goes on to say that a person is not eliqible to:

- prepare a design or give other information or opinion concerning whether a building or part of a building complies with the OBC, if the design, information or opinion is to be submitted to a CBO in connection with,
 - a) an application for a permit,
 - b) a request for change to permit information under Subsection 8.-(12) or (13) of the BCA, or
 - c) a General Review Report required by Div. C, Subsection 1.2.2.,

unless the Designer has the qualifications and meets the requirements set out in Div. C, Section 3.2.

According to Div. A, Clause 1.4.1.2.(1)(b) design activities are the activities described in Subsection 15.11-(5) of the Act that have been paraphrased in 1(a), (b) and (c) above. In turn, according to Subsection 15.11-(6) of the BCA, design includes:

a plan, specification, sketch, drawing or graphic representation respecting the construction of a building.

Facilitator / Self-Study / Participant Note: See Div. C, the heading of Column 2 of Table 3.5.2.1. "Classes of Registration for Persons ..." here the person is the firm or business entity if you prefer. In the heading of Column 3, "Categories of Qualifications for Inspectors and Persons ... ' here the person is a real live person or the individual or human being if you prefer than can successfully complete the examination program. The same logic would apply to Div. C. Columns 1 and 2 of Table 3.5.2.2.

Facilitator Self-Study Participant Note: Director means the Director of the Building and Development Branch of the Ministry of Municipal Affairs appointed by the Lieutenant Governor in Council under the authority of Subsection 2.-(2) of the BCA.

OBJECTIVES

In this module, you will:

- ★ identify Types of Buildings associated with registration and qualifications of Building Code Act practitioners,
- differentiate between the processes of registration and filing of categories of qualification for Building Code Act practitioners,
- ★ determine Classes of Registration and requirements for liability insurance for,

Designers engaged in the business of providing design activities to the public, and

Registered Code Agencies,

- ★ determine the category of qualifications for Other designers
- ★ differentiate Designers engaged in the business of providing design activities to the public from Other Designers,
- identify the provisions of the Code that the Divisional Court of the Ontario Superior Court of Justice has declared invalid and the portions of the Building Code Act, R.S.O. 1990, c. 23 that do not apply to designers who hold a licence or certificate issued under the Professional Engineers Act, R.S.O. 1990. C. P.28 and designers who hold a Certificate of Practice or a Temporary Licence under the Architects Act, R.S.O. 1990, c. A.26
- identify the Categories of Qualifications for:

Chief Building Officials,

Inspectors who have the same powers and duties as a CBO in relation sewage systems or plumbing,

Inspectors whose duties include the supervision or management of other Inspectors

All types of Inspectors including Fire Chiefs as OBC Inspectors under Div. C, Subsection 1.3.4. and Intern Inspectors,

Designers engaged in the business of providing design activities to the public and their staff is any,

Other Designers, and

Persons authorized by a Registered Code Agency, and

review the registration requirements of persons engaged in the business of constructing on-site, installing, repairing, servicing, cleaning or emptying sewage systems and the qualifications of their Installation Supervisors.

CLASSES OF REGISTRATION (FOR PERSONS AND FIRMS), CATEGORIES OF QUALIFICATIONS (FOR PERSONS WHO WRITE EXAMINATIONS) AND TYPE OF BUILDING

In the Introduction you saw that Building Officials and Designers are required under Section 15.11 of the BCA to have the qualifications and meet the requirements set out in the OBC for the position. Similarly, a Registered Code Agency (RCA) may be appointed provided that the persons authorized by the RCA pursuant to Section 15.17 of the BCA have the qualifications and meet the requirements set out in the OBC for the position.

The twelve Classes of Registration for persons and firms engaged in the business of providing design activities to the public, see Div. C, $3.2.2.1.(1) \rightarrow 3.2.4.1$. and 3.2.4.2., are identified in Rows 1 to 12, Column 2 of Table 3.5.2.1. and are associated with the Type of Building shown in Column 4 of the same Row.

The five Classes of Registration for Registered Code Agencies (persons and firms), see Div. C, 3.4.3.1. and 3.4.3.2., are identified in Rows 1 to 5 of Column 1 of Table 3.5.2.2. and are associated with the Type of Building referenced in Rows 1 to 10 of Table 3.5.2.1. by way of Column 3 of Table 3.5.2.2.

A review of the heading of Div. C, Tables 3.5.2.1. and 3.5.2.2. reveals that a Principal Authority and Other Designer [3.2.2.2.(1) → 3.2.5.1.(1)] do not have a Class of Registration. This means that unlike the RCA and the Designer engaged in the business of providing design activities to the public, they are not required to register with the Director. Registration with the Director requires insurance coverage and qualified staff. The staff of Principal Authorities and Other Designers are required to file their qualification information with the Director.

The technical qualifications of all Designers and Inspectors are identified in Rows 1 to 12 of Column 3 of Div. C, Table 3.5.2.1. The technical qualifications are associated with the Type of Building shown in Column 4 of the same Row. By way of Columns 2 and 3 of Table 3.5.2.2., Registered Code Agencies and persons authorized by a RCA to carry out plans review or inspection activities must have the same qualifications. Qualification under Rows 11 and 12 for Detection, Lighting and Power and Fire Protection is not available to RCAs and Persons authorized by a Registered Code Agency.

Facilitator/Self-Study
Participant Note: You may
wish to mark your copy of
the OBC as follows: The
heading of Div. C, Column
2 of Table 3.5.2.1. really
makes reference to the
business entity/firm,
Column 3 refers to persons
as individuals who can
write examinations [Public
Designers 3.2.4.2.(1)(a)
and (b)] [Other Designers
3.2.5.1.(1)(a)] and
Inspectors.

In Div. C. Table 3.5.2.2.. the heading of Column 1 refers to the business entity/firm that is the RCA and Column 2 refers to the persons individuals who can write examinations and who will act by signing certificates on behalf of the RCA [3.4.3.2.(1)(a) and 3.7.4.3.1 and who will perform the plans examination and inspection activities on behalf of the RCA [3.4.3.2.(1)(b) and (c) and 3.7.4.2.1.

The Classes of Registration, Categories of Qualifications and Type of Building are:

- 1- House
- 2- Small Buildings
- 3- Large Buildings
- 4- Complex Buildings
- 5- Plumbing House
- 6- Plumbing All Buildings
- 7- HVAC House
- 8- Building Services
- 9- Building Structural,
- 10- On-site Sewage Systems,
- 11- Detection, Lighting and Power, and
- 12- Fire Protection.

A person engaged in the business of providing design activities to the public would need to satisfy the "Qualification Requirements" of Div. C, Article 3.2.4.1. and the "Registration Requirements" of Article 3.2.4.2.

A Registered Code Agency would need to satisfy the "Qualification Requirements" of Div. C, Article 3.4.3.1. and the "Registration Requirements" of Article 3.4.3.2.

To register with the Director, Designers engaged in the business of providing design activities to the public and Registered Code Agencies must complete the "Designer Firm Application for Registration" or the "Registered Code Agency Application for Registration" which will attest of the firms insurance coverage and qualification of their respective staff.

To become qualified, chief building officials, inspectors, both types of designers as individual persons and persons authorized by RCAs must:

 successfully complete a Legal/Process examination associated with the position of the BCA practitioner, attesting the person's knowledge of the BCA and the OBC, (see page 5 for an overview of the four Legal/Process examinations)

and

 successfully complete one or more of the twelve technical examinations identified in Rows 1 to 12 of Div. C, Table 3.5.2.1., attesting the person's knowledge of the OBC,

and either

3. a) file their qualifications with the Director using the Chief Building Official's Filing form, the Supervisors' and Managers' Filing form, the Inspectors' Filing form or the Other Designers' Filing form as the case may be.

or

b) in the case of Designers engaged in the business of providing design activities to the public and Registered Code Agencies, the qualification of their respective staff is shown on "Schedule B: Qualified Persons" which is attached to the Application for Registration.

BCA and OBC QUALIFICATION EXAMINATION SYLLABI for BUILDING CODE ACT PRACTITIONERS

To assist you in preparing to write the associated Legal/Process Examination and the Technical Examination(s) associated with your position as a BCA practitioner, the Ministry of Municipal Affairs and Housing has prepared the Building Code Act and Building Code Qualification Examination Syllabi. The document is available on the Building Code Website www.ontario.ca/buildingcode left click "Qualifications and Registration", go down the menu and left click "Examination Syllabi".

FOUR LEGAL/PROCESS EXAMINATIONS FOR BUILDING CODE ACT PRACTITIONERS

Each Building Code Act practitioner must successfully complete a Legal/Process examination relating to the person's knowledge of the BCA and the associated requirements under the OBC. A review of the Examination Syllabi indicates that there are four Legal/Process Examinations.

Chief Building Officials, Inspectors with the powers and duties of a CBO in relation to sewage systems or plumbing and Inspectors whose duties are solely the supervision or management of Inspectors must successfully complete the Legal/Process Examination on the powers and duties of a Chief Building Official.

As a minimum Inspectors must successfully complete the General Legal/Process Examination. Alternatively, an Inspector may successfully complete the Legal/Process Examination on the powers and duties of a CBO.

Designers must, as a minimum, successfully complete the Designer Legal/Process Examination. Alternatively, a Designer may successfully complete either the Legal/Process Examination on the powers and duties of a CBO or RCA or the General Legal/Process Examination.

Registered Code Agencies and Persons who will sign Certificates on behalf an RCA must successfully complete the Legal/Process examination on the powers and Duties of a Registered Code Agency.

As a minimum Persons authorized by a Registered Code Agency to carry out plans review and inspection activities must successfully complete the General Legal/Process Examination. Alternatively, Persons authorized by a RCA may successfully complete the Legal/Process Examination on the powers and duties of a RCA.

EXERCISE#1 - CATEGORIES of QUALIFICATIONS and TYPE of BUILDING

To complete this exercise, you will need to consult Div. C, Tables 3.5.2.1. and 3.5.2.2. and the Examination Syllabi. Provide references as requested.

- In Div. C, Rows 1, 2, 3, 5, 7, 8, 11 and 12 of Column 4 of Table 3.5.2.1., the word "appurtenant" means;
 - a) belonging to the type of building
 - b) alien to the type of building

Facilitator / Self-Study
Participant Note:
According to the Oxford
Dictionary, ancillary
means auxiliary (to),
subordinate (to), or
subservient (to). It comes
from the words "ancilla",
maidservant and "ary"
meaning belonging (to) or
connected (with).

- Considering Div. C, Table 3.5.2.1. and for purposes of exceptions to Designer qualifications under Clauses 3.2.4.1.(4)(c) and Subclauses 3.2.5.1.(2)(b)(ii) and 3.2.5.1.(2)(j)(i) and (ii), an ancillary building is only associated with the following Type of Building:
 - a) House
 - b) Small Building
 - c) Large Building
 - d) Complex Building

ORC	reference:		
	TOTOTOTOG.		

- Consider a Designer who is required to provide designs of plumbing systems under the "House" Category of Qualification. He/she would need to successfully complete the technical examination associated with Div. C:
 - a) Row 1 of Table 3.5.2.1.
 - b) Row 5 and 6 of Table 3.5.2.1.
 - c) Row 5 or 6 of Table 3.5.2.1.
 - d) Row 8 of Table 3.5.2.1.
- 4. Consider the appointment of a Plumbing Inspector. To review plans and inspect plumbing in the "Small Buildings" Category of Qualifications. He/she would need to successfully complete the examination associated with Div. C:
 - a) Row 2 of Table 3.5.2.1.
 - b) Row 5 and 6 of Table 3.5.2.1.
 - c) Row 5 or 6 of Table 3.5.2.1.
 - d) Row 6 of Table 3.5.2.1.

- 5. Consider a Person to be authorized by a RCA to carry out plans review and inspections of all building systems, works, fixtures and services systems that are appurtenant to Part 3 buildings [Div. A, Article 1.1.2.2.] and Part 9 buildings [Div. A, Article 1.1.2.4.]. He/she would need to successfully complete the examination associated with Div. C:
 - a) Row 2, 4 or 11 of Table 3.5.2.1.
 - b) Rows 2, 4, and 8 of Table 3.5.2.1.
 - c) Row 8 or 11 of Table 3.5.2.1.
 - d) Row 8 of Table 3.5.2.1.

OBC References:	

- A consideration of the Examination Syllabus for Large Buildings indicates that a Designer, Inspector, RCA or Person authorized by a Registered Code Agency who intends to challenge this examination;
 - a) can expect to have questions dealing with Rapid Transit Stations
 - b) does not have to anticipate answering questions about Rapid Transit Stations
- 7. Sentences 1.1.1.3.(1) of the CCBFC, National Farm Building Code of Canada 1995 and 1.3.1.2.(3) of Division A inform us: that the construction of farm buildings must conform to the appropriate requirements in Ontario Regulation 403/97 (Building Code) as it read on December 30, 2006 except as specifically amended or exempted by the provisions of this (farm) Code. Consequently, for the designer of a 2 storey farm building with a building area of 610 m² requires the qualifications set out in:
 - a) row 2 of Table 3.5.2.1. of Division C
 - b) row 3 of Table 3.5.2.1. of Division C
 - c) row 4 of Table 3.5.2.1. of Division C
 - d) is exempted by Clauses 3.2.4.1.(3)(c) and 3.2.5.1.(2)(c) to have qualifications

OBC references:		



THE "GROUPING" and "STACKING" EFFECTS of VARIOUS CATEGORIES of QUALIFICATIONS in Div. C. TABLE 3.5.2.1.

Some Categories of Qualification in Table 3.5.2.1. have a "grouping" effect in the sense that qualification in;

"Plumbing - All Buildings".

"Building Services",

"Building Structural".

"On-site Sewage Systems",

"Detection Lighting and Power", and

"Fire Protection"

is valid for such systems associated with;

"Houses".

"Small Buildings"

"Large Buildings", and

"Complex Buildings".

Qualification in the "Small Buildings" category of qualification has a "stacking effect" in the sense that a review Subclause (b)(i) of Row 2 of Table 3.5.2.1. reveals that qualification under "Small Building" includes Row 1 "House".

NOTA BENE: If you successfully completed the "Small Buildings" examination when you complete the Filing form, in Field 2 under Categories of Qualification, insert a check mark in the box besides both "House" and "Small Buildings" and the "Exam Date" that you successfully completed the "Small Buildings" examination. If you do not apply, the system will not automatically recognize qualification for "House" for qualification in the "Small Buildings" Category of Qualification. The same principle would apply to a Designer (Firm) engaged in the business of providing design activities to the public and a Registered Code Agency when completing Field 2, Class(es) of Registration and Schedule B: Qualified Persons of their Application for Registration. The Certificate of Qualification for those BCA practitioners that are called upon to file qualifications and the Certificate of Registration for those BCA practitioners that are called upon to register with the Director, will attest of their qualifications as requested and entitled.

Qualification in the "Complex Buildings" category of qualification has a "stacking effect" in the sense that a review of the Examination Syllabi for "Complex Buildings" includes all of Div. B, Part 3, thus "Large Buildings" in Row 3 of Table 3.5.2.1.

NOTA BENE: If you successfully completed the "Complex Buildings" examination when you complete the Filing form, in Field 2 under Categories of Qualification, insert a check mark in the box besides both "Large Buildings" and "Complex Buildings" and the "Exam Date" that you successfully completed the "Complex Buildings" examination. If you do not apply, the system will not automatically recognize qualification for "Large Buildings" for qualification in the "Complex Buildings" category of qualification. The same principle would apply to a Designer (Firm) engaged in the business of providing design activities to the public and a Registered Code Agency when completing Field 2, Class(es) of Registration and Schedule B: Qualified Persons of their Application for Registration. The Certificate of Qualification for those BCA practitioners that are called upon to file qualifications and the Certificate of Registration for those BCA practitioners that are called upon to register with the Director, will attest of their qualifications as requested and entitled.

In addition to the "grouping effect" of qualifications under Row 6 "Plumbing - All Buildings", qualification in the "Plumbing - All Buildings" Category of Qualification also has a "stacking effect" in the sense that it includes qualification under Row 5 "Plumbing - House".

NOTA BENE: As implied by the term "Plumbing - All Buildings", it includes qualification in Plumbing-House Category of Qualification. If you wish to have your Certificate of Qualification or Certificate of Registration, as the case may be, show qualification in Plumbing-House and Plumbing-All Buildings or in Plumbing-All Buildings singly, you may so request when you file your qualifications with the Director or apply for registration.

In addition to the "grouping effect" of qualifications under Row 8 "Building Services" successful completion of the "Building Services" examination has a "stacking effect" in the sense that it includes qualification under both Row 7 "HVAC - House" and Row 11 "Detection, Lighting and Power".

NOTA BENE: If you wish to have your Certificate of Qualification or Certificate of Registration, as the case may be, show qualification in "Building Services", "HVAC - House" and "Detection, Lighting and Power", or "Building Services" singly, you may so request when you file your qualifications with the Director or apply for registration.

For those practitioners that do not require the full complement of qualifications under Row 8 "Building Services" they may elect to qualify themselves under the provisions of Row 11, "Detection, Lighting and Power"; which is a "subcategory" of qualifications under Row 8 "Building Services".

As mentioned earlier, qualification under Row 12 "Fire Protection" has a "grouping effect" in relation to "Houses", "Small Buildings", Large Buildings" and "Complex Buildings". It is a unique category of qualifications for those practitioners that do not need the full complement of qualifications under "Building Services" and "Houses", "Small Buildings", Large Buildings" or "Complex Buildings", as the case may be.

Note (1) to Div. C, Table 3.5.2.1.:

"An Inspector qualified in one category of qualification may carry out plans review and inspection in another category where to do so does not constitute a substantial part of the plans review or inspection on any project."

Note (2) to Div. C, Table 3.5.2.1.:

"A person registered in one class of registration or a person qualified in one category of qualification may carry out design activities in another class or category where to do so does not constitute a substantial part of the design activities on any project."

For example, consider the design of a renovation where the Designer is only qualified under Row 1 "House" and has specified the replacement of a bath room exhaust fan. The design and installation would need to comply with Div. B, Subsection 9.32.3. But, by virtue of Note (2) to Table 3.5.2.1., the OBC affords some flexibility to the Designer (both types) who would not be qualified under either Row 7 "HVAC - House" or Row 8 "Building Services".

A CONSIDERATION OF CATEGORIES OF QUALIFICATIONS UNDER Div. C, TABLE 3.5.2.1.

Consider the CBO of a small rural municipality, a one-person Building Department. The CBO needs to qualify for all aspects of the "House" Category of Qualification. To satisfy the requirements of Subsection 15.11-(1) of the BCA, he/she would have to successfully complete;

- the Legal/Process Examination on the powers and duties of a CBO as prescribed in Div. C, Clause 3.1.2.1.(1)(a) of the OBC, and
- 2. to satisfy the requirements of Div. C, Clause 3.1.2.1.(1)(b), four technical examinations, namely the ones identified in;
 - ✓ Row 1, "House".
 - ✓ Row 5, "Plumbing House".
 - ✓ Row 7, "HVAC House", and
 - ✓ Row 10, "On-site Sewage Systems".

On the other hand, if the CBO wanted to qualify for all aspects of "House" and "Small Buildings", he/she would have to successfully complete;

- the Legal/Process Examination on the powers and duties of a CBO as prescribed in Div. C, Clause 3.1.2.1.(1)(a) of the OBC, and
- to satisfy the requirements of Div. C, Clause 3.1.2.1.(1)(b), five technical examinations, namely the ones identified in;
 - ✓ Row 2, "Small Buildings",
 - ✓ Row 6, "Plumbing All Buildings",
 - ✓ Row 8, "Building Services",
 - ✓ Row 9, "Building Structural", and
 - ✓ Row 10, "On-site Sewage Systems".

EXPLANATORY NOTE: for Div. C, TABLE 3.5.2.1.

Column 2 is entitled "Classes of Registration for Persons Engaged in the Business of Providing Design Activities to the Public". Here, the word "person" means the "firm" or "business entity" if you prefer. Consequently, Column 2 of Div. C, Table 3.5.2.1. sets out the Classes of Registration for designer firms engaged in the business of providing design activities to the public.

Column 3 is entitled "Categories of Qualifications for Inspectors and Persons Described in Div. C, Clauses 3.2.4.2.(1)(a) and (b) and 3.2.5.1.(1)(a). Consequently, Column 3 of Div. C, Table 3.5.2.1. sets out the Categories of Qualifications for Inspectors appointed by municipalities, real live persons (individuals) employed by designer firms engaged in the business of providing design activities to the public [Div. C, 3.2.4.2.(1)(a) and (b)] and other designers [Div. C, 3.2.5.1.(1)(a)] not engaged in the business of providing design activities to the public or exempted from registration under Div. C, Sentences 3.2.4.1.(3) and (4).

Facilitator / Self-Study
Participant Note: The
decision of the Divisional
Court does not exempt the
holder of a Certificate of
Practice or a Temporary
Licence issued under the
Architects Act and licence
and certificate holders
under the Professional
Engineers Act who intend
to be a Chief Building
Official, Inspector, RCA or
Person authorized by an
RCA.

NOTA BENE:

The decision of the Divisional Court exempting designers who hold a Certificate of Practice or a Temporary Licence issued under the *Architects Act* and licence and certificate holders under the *Professional Engineers Act* will be dealt with in this Module.

EXPLANATORY NOTE for Div. C, TABLE 3.5.2.2.

Column 1 is entitled "Classes of Registration for Registered Code Agencies. Here, it is quite clear that we are talking about the "firm" or "business entity" if you prefer.

Column 2 is entitled "Category of Qualification for Persons Described in Div. C, Clauses 3.4.3.2.(1)(a) to (c). Clearly, these are the real live persons (individuals) in the employ of the RCA or the RCA in the case of a one-person operation.

Column 3 is the link back to Div. C, Table 3.5.2.1. for the 10' Categories of Technical Qualifications required of Persons authorized by a RCA. Take note that qualification and registration under Row 11 "Detection, Lighting and Power" and 12 "Fire Protection" is not available to RCAs and Persons authorized by RCAs.

EXERCISE # 2 - CATEGORIES of QUALIFICATIONS of REAL LIVE PERSONS in the EMPLOY of DESIGNERS AND RCAS

To complete this exercise you will need to consult Div. C, Tables 3.5.2.1.and 3.5.2.2., any references that are provided in each question and the decision of the Ontario Superior Court of Justice, Divisional Court in "Association of Professional Engineers of Ontario v. Ontario (Municipal Affairs and Housing).

- Not considering a person who is the holder of a Certificate of Practice or a Temporary Licence issued under the Architects Act or is the holder of any licence or certificate issued under the Professional Engineers Act, a consideration of Div. C, Sentence 3.2.1.1.(1) and Subsection 3.2.2. indicates that the qualifications prescribed in Section 3.2. of the Ontario Building Code are:
 - a) only required for Designers engaged in the business of providing design activities to the public
 - b) only required for Other Designers not engaged in the business of providing design activities to the public
 - c) required of Designers engaged in the business of providing design activities to the public and Other Designers
 - d) required of Designers engaged in the business of providing design activities to the public or Other Designers
- 2. A person associated with Div. C, Clause 3.2.4.2(1)(a) is:
 - a) an Inspector
 - b) a Person authorized by a Registered Code Agency
 - a Designer engaged in the business of providing design activities to the public who is not an Architect or Professional Engineer
 - d) an Other Designer not engaged in the business of providing design activities to the public or exempted from registration by Div. C, Sentences 3.2.4.1.(3) and (4) and who is not an Architect or Professional Engineer

ORC	reference:					

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- 3. A person associated with Div. C, Clause 3.2.5.1.(1)(a) is:
 - a) an Inspector
 - b) a Person authorized by a Registered Code Agency
 - a Designer engaged in the business of providing design activities to the public who is not an Architect or Professional Engineer
 - d) an Other Designer not engaged in the business of providing design activities to the public or exempted from registration by Div. C, Sentences 3.2.4.1.(3) and (4) and who is not an Architect or Professional Engineer

ORC	reference:		
	TOTOTOTOO.		

- 4. Consider Column 2 of Div. C, Table 3.5.2.2., the Building Code Act and the Building Code Qualification Examination Syllabi. The person referred to in Div. C, Clause 3.4.3.2.(1)(a) would need to successfully complete the:
 - a) General Legal/Process Examination
 - b) Legal/Process Examination on Powers and Duties of a Registered Code Agency
 - Legal/Process Examination on Powers and Duties of a Chief Building Official
 - d) Designer Legal/Process Examination
- 5. Consider Column 2 of Div. C, Table 3.5.2.2., the Building Code Act and the Building Code Qualification Examination Syllabi. The person referred to in Div. C, Clauses 3.4.3.2.(1)(b) and (c) who have successfully completed the examination program of the Ministry of Municipal Affairs and Housing would be entitled to carry out plans review and inspection activities on behalf of:
 - a) a Principal Authority
 - b) the Council of a Municipality
 - c) a Designer
 - d) a Registered Code Agency

Facilitator / Self-Study
Participant Note:
According to Div. C.
Sentence 3.7.4.3.(1), the
persons that have
successfully completed the
examination referred to in
Clause 3.4.3.2.(1)(a) are
authorized to sign
"Certificates" on behalf of
the RCA.

- Consider the technical competencies required of a Registered Code Agency to register in the "Small Buildings" Class of Registration of Div. C, Table 3.5.2.2. To carry out plans review and inspection activities, the RCA must employ Person(s) who have successfully completed the following examinations from Div. C, Table 3.5.2.1.,
 - a) "Small Buildings", "Plumbing All Buildings", "Building Services", "Building Structural" or "On-site Sewage Systems"
 - b) "Small Buildings", "Plumbing All Buildings", "Building Services", "Building Structural" and "On-site Sewage Systems"
 - c) "Small Buildings", "Plumbing All Buildings", "Building Services", "Building Structural" or "On-site Sewage Systems" when providing services in a rural area
 - d) "Small Buildings", "Plumbing All Buildings", "Building Services", "Building Structural" and "On-site Sewage Systems" when providing services in a rural area

OBC References: _	 	

STOP

COMMON ASPECTS of QUALIFICATIONS of PERSONS (PRACTITIONERS) UNDER THE BCA

- 1- The Practitioner is a Building Official, Designer, RCA staff or On-site Sewage Systems Installer Supervisor.
- 2- The BCA requires qualifications under the OBC to practice or to be appointed.
- 3- Under the BCA practitioners are prohibited from misrepresenting their qualifications.
- 4- The BCA/OBC require successful completion of Ministry of Municipal Affairs and Housing examination program.
- 5- The Practitioner must file his/her qualification information with the Director.
- 6- The Practitioner is responsible to keep current, his/her information on file with the Director.
- 7- The Practitioner is required to pay registration and renewal fees.
- 8- The Practitioner's information is maintained in a Public Register.

QUALIFICATIONS OF BUILDING OFFICIALS

The term "Building Official" includes;

- Chief Building Officials (§ CBO),
- Chief Building Officials as Inspectors (‡ CBO/I),
- Inspectors and Senior Inspectors who have the same powers and duties as the CBO in relation to plumbing (* I/CBO-P),
- Inspectors and Designated Inspectors who have the same powers and duties as the CBO in relation to sewage systems (ø I/CBO-SS),
- Inspectors as Supervisors and Managers of Inspectors, and
- Inspectors, all other types, including Fire Protection OBC Inspectors under Subsection 1.3.4. and Intern Inspectors.

We will now look at the qualifications that a person must have to be appointed or to remain appointed, when appointed prior to December 31, 2005. Facilitator/Self-Study
Participant Note: By virtue
of Clauses 1.-(1.3)(a) and
(b) of the BCA the Role of a
CBO under Subsection 1.1(6) applies to an Inspector
who has the same powers
as the CBO in relation to
Sewage Systems or
Plumbing.

In Module Three, we acquired knowledge on the Role of a CBO and that of an Inspector as spelled out in Subsections 1.1-(6) and (7) of the BCA. From experience, we can conclude that, depending on the structure of the Building Department, Inspectors may need to be qualified in one or more of the *Categories of Qualifications* described in Div. C, Rows 1 to 12 of Table 3.5.2.1. As evidenced by Div. C, Clause 3.1.2.1.(1)(b), Chief Building Officials who do not perform any of the duties of an Inspector, do not require any qualification under Div. C, Table 3.5.2.1.

Not including the exceptions under Sentence 3.1.1.1.(2), all Chief Building Officials and Inspectors require qualifications to be appointed or to remain appointed. Div. C, Sentence 3.1.1.1.(1) informs us that Section 3.1. prescribes the qualifications of:

- ✓ CBO's to satisfy Subsection 15.11-(1) of the BCA,
- ✓ Inspectors who have the same powers and duties as a Chief Building Official in relation to plumbing or sewage systems to satisfy Subsection 15.11-(2) of the BCA, and
- ✓ all types of Inspectors, including Fire Chiefs as OBC Inspectors under Div. C, Subsection 1.3.4. and Intern Inspectors under Article 3.1.4.2., to satisfy Subsection 15.11-(3) of the BCA.

There are two exceptions for Inspectors whose duties include plans review or inspection of Sewage Systems under Div. B, Part 8. They have been required to have technical qualifications since April of 1998.

- ✓ Their existing technical qualifications are continued as the qualifications associated with Div. C, Row 10 of Table 3.5.2.1., provided the information was filed with the Director under Article 2.11.3.1. as it read prior to September 1, 2003.
 - [Div. C, Clause 3.1.2.1.(2)(b)for the Inspector who has the powers and duties of a CBO in relation to sewage systems and Div. C, Sentence 3.1.4.1.(2) for other on-site sewage systems Inspectors]
- ✓ The Inspectors with the powers and duties of a CBO need to successfully complete the Legal examination on the powers and duties of a CBO and the other on-site sewage system Inspectors must successfully complete either the General Legal/Process Examination or the Legal/Process examination on the powers and duties of a CBO.

EXERCISE # 3 - CATEGORIES OF QUALIFICATIONS FOR CBOs AND INSPECTORS

Answer the following questions and support your answers with appropriate references.

- The Categories of Qualifications for Chief Building Officials whose duties include plans review or inspection activities, can be found in:
 - a) Div. A, Rows 1 to 12 of Table 3.5.2.2.
 - b) Div. B, Rows 1 to 12 of Table 3.5.2.1.
 - c) Div. C, Rows 1 to 12 of Table 3.5.2.1.
 - d) Div. C, Rows 1 to 12 of Table 3.5.2.2.

OBC References: _		

2. For each type of Building Official identified in Row 1 of the Table on the next page, insert the appropriate reference from Section 15.11 of the BCA and Div. C, Section 3.1. These are the qualifications that Chief Building Officials and Inspectors must have to be appointed OR to remain appointed if they were appointed before December 31, 2005.

Module Four QUALIFICATIONS AND REGISTRATION UNDER THE BCA AND THE OBC Page 20

Qualifications of Building Officials to be appointed and to remain appointed after December 31, 2005	CBO §	CBO/I	I/CBO-P	I/CBO-SS	Supervisors and Managers of Inspectors	Inspectors, including Fire Chiefs as OBC Inspectors under Div. C, Subsection 1.3.4.
	BCA REQ	UIREMENTS FOR	QUALIFICATIONS	OF BUILDING OFF	ICIALS	
Requirement to have the qualifications as set out in the OBC						
Prohibition to misrepresent qualifications						
	OBC PRESCR	RIBED QUALIFICA	ATIONS FOR BUILD	ING OFFICIALS in	Division C	
Successful completion of MAH Legal/Process Examination on Powers and Duties of a CBO						
Successful completion of MAH General Legal/Process Examination						
Successful completion of MAH examinations related to category of qualifications in Div. C, Column 3 of Table 3.5.2.1.				note (1)		note (1)
File information set out in Div. C, Seniance 3.1.6.1.(1) with the Director						

⁽¹⁾ Technical qualification under Row 10 of Division C, Table 3.5.2.1., for I/CBO-SS and Inspectors of on-site sewage systems are continued provided they were filed with the Director, under Article 2.11.3.1. as it read prior to September 1, 2003.

Module Four QUALIFICATIONS AND REGISTRATION UNDER THE BCA AND THE OBC Page 21

 Make a list of the plans review and inspection activities that may be carried out by Chief Building Officials and Inspectors without qualifications under the OBC.

The building code requirements for the qualifications of Chief Building Officials and Inspectors do not apply to plans review and inspections related to:

i)
ii)
iii)
iv)
OBC references:
Consult Div. C, Article 3.1.4.2. "Qualifications for Internal Inspectors" and in the space provided note any commen question or concern. During the course, the facilitator will respond to any comment, question or concern you may have

NOTA BENE:

Under Div. C, Article 3.1.4.2., the Minister of Municipal Affairs and Housing has approved an Internship Program for building officials to be administered by the Ontario Building Officials Association. Further information and application forms can be found on OBOA's website at: http://www.oboa.on.ca



QUALIFICATIONS of RCA STAFF

In Module 2, we reviewed the Role of a Registered Code Agency under Subsection 1.1-(5) of the BCA. Here we will look at the Categories of Qualifications of persons described in Div. C, Column 2 of Table 3.5.2.2. We will not look at the Application for Registration or the Renewal of Registration of a RCA under Div. C, Article 3.4.3.3.

For the purpose of Div. C, Table 3.5.2.2. and elsewhere in the OBC, persons described in **Div. C**, **Clause 3.4.3.2.(1)(a)** makes reference to the RCA or another Person or Persons as authorized by the RCA who has successfully completed the Legal/Process Examination related to the powers and duties of a RCA and is thus authorized, on behalf of the RCA, to:

- ✓ sign certificates under Div. C, Article 3.7.4.3.,
- ✓ receive the documentation identified in Div. C, Section 2.1. from the proponent of an alternative solution,
- ✓ make an OTU under Subsection 13.-(6) of the BCA, or
- ✓ make a SWO under Subsection 14.-(1).

For the purpose of Div. C, Table 3.5.2.2. and elsewhere in the OBC, persons described in Div. C, Clauses 3.4.3.2.(1)(b) and (c) makes reference to the RCA or another Person or Persons as authorized by the RCA who has successfully completed the General Legal/Process Examination or the Legal/Process Examination related to the powers and duties of the RCA and the Technical Examinations related to the Category of Qualification set out in Column 2 of Table 3.5.2.2. for the RCAs Class of Registration in Column 1 of the same Table. According to Section 15.17 of the BCA, the persons authorized by the RCA to carry out plans review and inspection activities have the powers and duties of an inspector appointed by a Principal Authority.

NOTA BENE: The Divisional Court did not exempt Architects and Professional Engineers from having BCA and OBC qualifications to become RCAs.

EXERCISE # 4- REGISTRATION of RCAs

To complete this exercise you will need to consult Subsections 15.11-(4) and 15.11-(7) and Section 15.13 of the BCA; and Div. C, Article 3.4.3.2. of the Code.

Facilitator / Self-Study
Participant Note: Consult
Div. C. Clauses
3.4.3.3.(3)(c) and (f); the
R C A's Quality
Management Plan must
contain information about
the procedures for the
assessment of alternative
solutions and the issuance
of certificates and orders.

Alternative solutions will be dealt with in Module Twelve. Facilitator / Self-Study
Participant Note: This
exercise deals with the
qualifications for the
Registration of a RCA as
opposed to the "Categories
of Qualifications" of real
live persons who work for
the RCA.

As of July 1, 2005 municipalities may, pursuant to Section 4.1 of the BCA, enter into agreements with and appoint Registered Code Agencies that are registered with the Director.

 In the space provided, insert the appropriate BCA or OBC reference for the stated qualification.

Qualifications for Registration Registered Code Agencies	of
BCA REQUIREMENTS FOR RCAs	BCA REFERENCES
Requirement to have the qualifications and meet the requirements set out in the OBC	
Prohibition to misrepresent RCA qualifications	
Requirement for RCA to have the insurance coverage specified in the OBC	
Prohibition to misrepresent RCA insurance coverage	
OBC Prescribed Qualifications for Registration of RCAs	OBC Div. C
The Director may register a RCA, in each Class of Registration in Column 1 of Table 3.5.2.2. (subject to Article 3.4.3.9.) if:	
the RCA and Person(s) authorized by the RCA has/have successfully completed the Legal/Process Examination related to the powers and duties of a RCA	
Other Person(s) authorized by the RCA to only carry out plans review and inspection activities, has/have successfully completed the General Legal/Process Examination	and
the RCA and all Person(s) authorized by the RCA to carry out plans review and inspection activities, has/have also successfully completed the Technical Examinations related to the Type of Building set out in Column 3 of Table 3.5.2.2. for the corresponding Class of Registration in Column 1 and Category of Qualification in Column 2 of said Table	and
the RCA has a Quality Management Plan, referred to in Sentence 3.4.3.3.(3) that is acceptable to the Director	
the RCA has the insurance coverage required by Subsection 3.6.2.	
the application is complete, and	
the fees required under Article 3.4.3.5. are paid	

NOTA BENE:

These provisions of the BCA and the Code apply to Architects and Professional Engineers as Registered Code Agencies.

Allow 20 minutes to the next stop sign.



PROFESSIONAL ENGINEERS AS DESIGNERS AND THE DECISION OF THE DIVISIONAL COURT

On May 17, 2007 the Divisional Court of the Ontario Superior Court of Justice released its decision in the case of the "Association of Professional Engineers of Ontario v. Ontario (Municipal Affairs and Housing) that it had heard on October 26-27, 2006.

The application for judicial review challenged the validity of certain amendments to the Building Code, Ont. Reg. 403/97, a regulation enacted pursuant to the *Building Code Act* 1992, S.O. 1992, c. 23. The applicants, the Association of Professional Engineers of Ontario and Bernard Ennis, P. Eng., alleged that the amendments are invalid to the extent that they establish a duplicate registration or qualification scheme for Association of Professional Engineers of Ontario (PEO) licence holders who prepare designs or conduct general reviews of buildings. The applicants contended that the regulation is invalid and should be read down to exclude PEO licence holders. The Ontario association of Architects as an intervenor, supported the application.

NOTA BENA:

The Carswell Dictionary of Canadian Law informs us that the word "intervenor" describes persons or associations that are permitted to participate in proceedings to promote their own views, though the proceedings will not determine their legal rights.

The three Justices of the Divisional Court disposed as follows:

- Article 2.3.1.1 [now 1.2.1.1. of Division C] of the Building Code is not authorized by s. 34(1) 10 of the Building Code Act and is invalid to the extent that it purports to allocate responsibility for designs between professional engineers and architects.
- Article 2.3.1.1(4) [now 1.2.1.1.(4) of Division C] of the Building Code is not authorized by s. 34 of the Building Code Act and is invalid.

- Clause 1.1(1)(c), subsection 1.1(2), clause 8(2)(c), and subsection 15.11(5) to (7) of the Building Code Act conflict with the exclusive regulatory jurisdiction of the PEO and do not apply to any licence or certificate holder under the Professional Engineers Act.
- Article 2.17 [now 3.2. of Division C] of the Building Code conflicts with the exclusive regulatory jurisdiction of the PEO and does not apply to any holder of any licence or certificate issued under the *Professional Engineers Act*.

Order to follow accordingly.

While relief is only available to the applicant professional engineers in this case, in my opinion the analysis of these reasons for judgement applies equally to the intervenor architects.

NOTA BENE:

In paragraph 3. above, the Canadian Legal Institute website inadvertently makes reference to subsections 15(5) to (7) instead of 15.11(5) to (7).

The Government of Ontario did not seek leave to appeal the decision of the Divisional Court. In short, the effects of the decision of the Divisional Court are as follows:

- the designer qualification and registration provisions of the Building Code Act and the Building Code do not apply to Architects and Professional Engineers,
- Architects and Professional Engineers do not have to complete Schedule 1 of the prescribed "Application for a Permit to Construct or Demolish",
- The Building Code is now silent about which buildings require design by Architects and Professional Engineers, any questions should be directed to the respective association.
- The provisions of the respective Architects Act and Professional Engineers Act govern how plans, sketches, drawings, graphic representations, specifications and other documents prepared by Architects and Professional Engineers are signed and sealed.
- The role of designers described in Subsection 1.1(2) of the Building Code Act does not apply to Architects and Professional Engineers.

NOTA BENE: The Divisional Court did not consider the qualification requirements of the BCA and OBC relating to building officials, on-site sewage system installers and registered code agencies.

The Ministry is working with stakeholders including architects, building officials and engineers to monitor the implications of the decision of the Divisional Court on the administration and enforcement of the *Building Code Act*, 1992 and the building code.

The Architects Act and the Professional Engineers Act are not defined as applicable law in Article 1.4.1.3. of Division A of the Building Code.

Inquiries regarding practices for Architects and Professional Engineers should respectively be made to the Ontario Association of Architects or Professional Engineers Ontario.

Ontario Association of Architects 111 Moatfield Drive Toronto, Ontario M3B 3L6

phone: (416) 449-6898

toll free phone: 1-800-565-2724

fax: (416) 449-5756

e-mail: <u>oaamail@oaa.on.ca</u> website: <u>http://www.oaa.on.ca</u>

Professional Engineers Ontario 25 Sheppard Avenue West, Suite 1000 Toronto, Ontario M2N 6S9

phone: (416) 224-1100

toll free phone: 1-800-339-3716

fax: (416) 224-8168

toll free fax: 1-800-268-0496

e-mail: see EmailPEO under contact on PEO website

website: http://www.peo.on.ca

ARCHITECTS AS DESIGNERS AND THE EFFECT OF THE DECISION OF THE DIVISIONAL COURT

As a result of the decision of the Divisional Court, the Ontario Association of Architects (OAA) has notified the Attorney General and the Minister of Municipal Affairs and Housing of OAA's termination of the Memorandum of Understanding that outlined the parameters of OAA's "parallel system" for qualification and registration regarding knowledge of the *Building Code Act* and Ontario Building Code by Architects.

The OAA Council has also requested that Regulation 27 of the Revised Regulation of Ontario 1990 under the *Architects Act*, be amended to pre-O. Reg 144/05 status.

Facilitator/Self-Study Participant Note: Div. C, Clause 1.4.1.2.(1)(b) of the OBC informs us that the "designer" is the person responsible for the design. In other words, the Designer is the person who reviews and takes responsibility for the design activity.

QUALIFICATIONS FOR DESIGNERS WHO ARE NOT ARCHITECTS AND PROFESSIONAL ENGINEERS

In Exercise #2 of Module Three, you reviewed the role of Designers as outlined in Subsection 1.1-(2) of the BCA. In this exercise, you will differentiate the qualifications for registration of Designers engaged in the business of providing design activities to the public and the qualifications of Other Designers who are not engaged in the business of providing design activities to the public or are exempt from registration.

We will not look at the Application for Registration or Renewal of a Registration of the Designer engaged in the business of providing design activities to the public in Div. C, Article 3.2.4.3.

The Other Designer who is not engaged in the business of providing design activities to the public or is exempt from registration, just like the Chief Building Official and Inspector, is **not** required to Register with the Director, only to file his/her qualifications and personal information with the Director. [Div. C, Clause 3.2.5.1(1)(b)]

Div. C, Sentence 3.2.1.1.(1) informs us that Section 3.2. of the OBC prescribes the qualifications of Designers for the purposes of Clause 8.-(2)(c) and Subsection 15.11-(5) of the BCA. Consequently, in the next exercise, we will deal with the General Rule of the BCA which requires a Designer to have the qualifications and meet the requirements set out in the OBC.

In the next module we will deal with the exception to the general rule and identify the design activities which are exempted from the need to have the qualification (register with the Director) of a Designer engaged in the business of providing design activities to the public or have the qualifications of an Other Designer (file qualifications with Director) or are exempted from both registration and qualification.

EXERCISE #5 - QUALIFICATIONS for DESIGNERS WHO ARE NOT ARCHITECTS AND PROFESSIONAL ENGINEERS

To complete this exercise, you will need to consult Subsections 15.11-(5) and 15.11-(7) and Section 15.13 from the BCA and from Div. C, Subsection 3.2.2. and Articles 3.2.4.2. and 3.2.5.1.

 In your own words, complete the following statement. Support you answer with the BCA references.

NOTA BENE

The provisions of Subclause 15.11-(5) 1. iii and Paragraph 15.11-(5) 2. were declared invalid by the Divisional Court on May 17, 2007. The Architect or Professional Engineer that provides a General Review report does not require BCA and OBC qualifications.

A designer who is not an Architect or a Professional Engineer must have the qualifications and meet the requirements set out in the OBC when he/she prepares a design, gives information, or an opinion, whether a building or part thereof complies with the OBC in connection with;

Participant Note: Consider Div. C. Article 3.2.2.2. when a Designer works "in-house" or is exempted from registration by Sentence 3.2.4.1.(3) or (4) he/she must have the qualifications set out in Sentence 3.2.5.1.(1) unless further exempted by Sentence 3.2.5.1.(2).

2.	Consult Div. C, Articles 3.2.2.1. and 3.2.2.2. and in the space provided note any comment, concern or question. During the
	course, the facilitator will respond to any comment, question or concern you may have.
_	
_	

3. Insert the appropriate BCA references for the stated qualification for Designers and the OBC references for the prescribed qualifications for the registration of Designers engaged in the business of providing design activities to the public and the OBC prescribed qualifications of Other Designers.

Qualifications for Designers	
BCA REQUIREMENTS for QUALIFICATIONS OF DESIGNERS	BCA REFERENCES
Requirement for Designer to have qualifications and meet the requirements set out in the OBC	
Prohibition to misrepresent Designer's qualifications	
Requirement for Designer to have the insurance coverage specified in the OBC	
A builder or vendor registered with the ONHWPA is exempt from Designer's duty to have insurance coverage	
Prohibition to misrepresent Designer's insurance coverage	
OBC Prescribed Qualifications for Registration of Designers providing design activities to the public	OBC Div. C REFERENCES
to have qualifications set out in Sentence 3.2.4.1.(1)	
Subject to Article 3.2.4.9. the Director may register a person (business entity) in each Class of Registration in Column 2 of Table 3.5.2.1. if:	
the applicant must successfully complete the MAH examination relating to the person's knowledge of the BCA [Designer Legal/Process Examination as a minimum] and the OBC in relation to the Category of Qualifications in Column 3 of Table 3.5.2.1. that correspond to the Class of Registration of the business entity in Column 2	
all persons who on behalf of the registered business entity will review and take responsibility for providing design activities to the public have successfully completed the MAH examinations relating to the person's knowledge of the BCA [Designer Legal/Process Examination as a minimum] and the OBC in the Category of Qualifications set out in Column 3 of Table 3.5.2.1. for the Class of Registration of the business entity in Column 2	
the business entity providing design activities to the public has the insurance required by Subsection 3.6.2.	
the application is complete, and	
the fees required under Article 3.2.4.5. are paid	

NOTA BENE:

The provisions of the BCA and of the Code for designer qualifications do not apply to Architects and Professional Engineers.

OBC Prescribed Qualifications for Other Designers not engaged in the business of providing design activities to the public or exempt from registration	OBC Div. C REFERENCES
Other Designers to have the qualifications set out in Sentence 3.2.5.1.(1)	
Other Designer who undertake design activities need to successfully complete the MAH examination relating to the person's knowledge of the BCA [Designer Legal/Process Examination as a minimum] and the OBC in relation to the Category of Qualifications in Column 3 of Table 3.5.2.1. that corresponds to the type of building in Column 4	
Other Designer to file information set out in Sentence 3.2.5.3.(1) with the Director	

4. To satisfy the requirements of Div. C, Clause 3.2.4.2.(1)(c) a Designer who is not an Architect or a Professional Engineer and who is engaged in the business of providing design activities to the public must be covered by the insurance required under Subsection 3.6.2. Complete the following Table by inserting the associated billing fee for the stated insurance coverage and support your answer with OBC references.

	rage for Designers Engliding Design Activities	
Limit of indemnity during any one period of insurance	Amount of fees billed in the 12 months immediately before the issuance of the policy	OBC Div. C REFERENCE
\$1,000,000 per claim and \$2,000,000 in the aggregate		Sub-Subclause
\$500,000 per claim and \$1,000,000 in the aggregate		Sub-Subclause
\$250,000 per claim and \$500,000 in the aggregate		Sub-Subclause

5.	In your own words, complete the following statement. If the Designer engaged in the business of providing design activities to the public has been registered for less than one year before the issuance of the policy, the amount of insurance per claim and in the aggregate is determined:
	OBC Reference:

STOP

QUALIFICATIONS FOR PERSONS ENGAGED IN THE BUSINESS OF CONSTRUCTING ON SITE, INSTALLING, REPAIRING, SERVICING, CLEANING OR EMPTYING SEWAGE SYSTEMS

Facilitator / Self-study
Participant Note: These
provisions apply to
Architects and Professional
Engineers because the
Divisional Court did not
consider the qualification
requirements of on-site
sewage system installers.

Since April 6, 1998 persons (business entities/firms) engaged in the business of constructing on site, installing, repairing, servicing, cleaning or emptying sewage systems were required to hold a Business Licence from the Director. Issuance and renewal of the Business Licence required the person to have one or more qualified Installer Supervisor on staff. The Installer Supervisor who supervises the construction on-site, installation, repair, servicing, cleaning or emptying of sewage systems, was required to successfully complete a Ministry's examination verifying the Installer Supervisor's knowledge of the OBC and the construction, maintenance and operation of On-site Sewage Systems.

The On-site Sewage Systems Business Licencee was also required to file and keep current, the business licencing information and the qualification information of the Installer Supervisor(s) on staff.

LICENCES OF SEWAGE SYSTEM INSTALLERS ARE CONTINUED AS REGISTRATION

On September 1, 2003, the licencing process became the registration process and the holders of licences of the day were automatically registered. Previously acquired qualifications of Installer Supervisors were continued under the registration system.

Facilitator / Self-Study Participant Note:

OLD NEW

Business
License = Registration

Installer Supervisor previous qualifications = new Oualifications

Division C, Sentence 3.3.3.2.(2) confirms that previously <u>filed</u> <u>qualifications</u> attesting the <u>Installer Supervisor</u>'s knowledge of the OBC and the construction, maintenance and operation of Onsite Sewage Systems <u>are continued</u>.

RENEWAL OF REGISTRATION OF SEWAGE SYSTEMS INSTALLERS AND UPDATING OF QUALIFICATIONS OF INSTALLER SUPERVISORS

Div. C, Sentence 3.3.3.3.(2) of the OBC requires Registered Sewage System Installers to apply to the Director to renew their registration at least 60 days before the expiry of the registration to be renewed.

On the other hand, the requirement for Installer Supervisors to update their qualifications by successfully completing the new examination will be triggered by a notice given to the Registered Sewage System Installer by the Director as evidenced by Division C, Clause 3.3.3.7.(1)(b) and Article 3.3.3.8.

EXERCISE # 6- QUALIFICATIONS OF SEWAGE SYSTEMS INSTALLERS

Div. C, Sentence 3.3.1.1.(1) informs us that Section 3.3. of the OBC prescribes the qualifications of Sewage Systems Installers for the purposes of Subsection 15.12-(1) of the BCA.

To complete this exercise you will need to consult Section 15.12, of the BCA and 3.3. of Division C of the Ontario Building Code.

 Insert the appropriate BCA or OBC reference for the stated qualifications requirement.

Qualifications for Registration of Sewage Systems Installers	of
BCA REQUIREMENTS FOR QUALIFICATIONS OF SEWAGE SYSTEMS INSTALLERS	BCA references
requirement for Sewage Systems Installers to have the qualifications and meet the requirements set out in the OBC	
Prohibition to misrepresent Sewage Systems Installer qualifications	
OBC Prescribed Qualifications for Registration of Sewage Systems Installers (in this case it is registration without insurance coverage)	OBC Div. C references
Subject to 3.3.3.9. the Director may register a Sewage System Installer if:	
the Sewage Systems Installer has on staff Installer Supervisor(s) that has successfully completed the MAH examination relating to the person's knowledge of the BCA, the OBC and the construction, maintenance and operation of sewage systems	
the application is complete, and	
the fees required under Article 3.3.3.5. are paid	

Facilitator / Self-Study Participant Note: RCAs and Designers engaged in the business of providing design activities to the public must register with the Director. The registration process includes insurance coverage plus qualified staff. Sewage System Installers do not require insurance coverage to register but they need qualified Installer Supervisor(s) on staff.

Building Officials and Other Designers are simply required to file their qualifications with the Director. In the previous exercises you saw that Designers engaged in the business of providing design activities to the public, Registered Code Agencies and persons engaged in the business of constructing on site, installing, repairing, servicing, cleaning or emptying Sewage Systems are required to register with the Director. The registration process includes the personal information of their staff and their qualifications.

On the other hand, Building Officials and Other Designers who are not engaged in the business of providing design activities to the public, or who are exempt from registration are not required to register. Simply, they must file and keep current their personal information and qualifications with the Director.

Consequently, the provisions of the OBC associated with the suspension, revocation, refusal to register or refusal to renew a registration only apply to Designers engaged in the business of providing design activities to the public and who are not Architects or Professional Engineers, Registered Code Agencies including Architects and Professional Engineers and persons or entities including Architects and Professional Engineers who are engaged in the business of constructing on site, installing, repairing, servicing, cleaning or emptying sewage systems.



EXERCISE # 7 - SUSPENSION, REVOCATION, REFUSAL TO REGISTER OR RENEW A REGISTRATION

To complete this exercise you will need to consider the "Suspension, Revocation, Refusal to Register or Renew a Registration" provisions of Division C. Article 3.2.4.9. in the case of Designers engaged in the business of providing design activities to the public; 3.3.3.9. for Sewage Systems Installers and 3.4.3.9. for Registered Code Agencies.

You will also need to consult the "Mandatory Suspension or Revocation of Registration or Refusal to Register or renew Registration" provisions of Division C. Article 3.2.4.10. in the case of designers engaged in the business of providing design activities to the public and 3.4.3.10. in the case of Registered Code Agencies.

 In the space provided in the following Table, insert the appropriate Division C reference associated with the statement in Column 1. Note any comment, question or concern in the space provided under the Table. During the course, the facilitator will respond to any comment, question or concern you may have.

	Public Designers	Sewage Systems Installers	RCAs
The Director may:			
refuse to register an applicant or to renew a registration			
suspend or revoke a registration			
When:			
the registered person is in contravention of the BCA or the OBC			
the registered person is in breach of a condition of registration other than the requirement to have insurance coverage		(1)	
the registered person is in breach of a condition of registration	(1)		(1)
the registration was issued on the basis of mistaken, false or incorrect information			
the Director is of the opinion that the past conduct of the person affords reasonable grounds to believe, that the business will not be carried on in accordance with law			
the Director is of the opinion that there are reasonable grounds to believe that the activities of the person will be carried out in a manner that poses a threat to public safety	(1)	(1)	
an order under Ss. 69(2) of the <i>Provincial Offences Act</i> is directing that the registration not be issued or suspended until a fine is paid	(1)		(1)
the application is incomplete, or			
any fees required are unpaid.			

 Name the two circumstances when the Director <u>must</u> refuse to register an applicant, <u>must</u> refuse to renew a registration or <u>must</u> suspend or <u>must</u> revoke the registration of a Designer engaged in the business of providing design activities to the public or the registration of a Registered Code Agency.

The Director **must** refuse to register an applicant, refuse to renew a registration, or suspend or revoke the registration of a Designer engaged in the business of providing design activities to the public **or** that of a Registered Code Agency when the Director is made aware:

or
OBC References for Designers engaged in the business of providing design activities to the public:
OBC References for Registered Code Agencies:

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- 3. When the Director proposes to refuse to register or renew a registration or proposes to suspend or revoke a registration the decision to do so may be appealed to the:
 - a) Ontario Court of Justice
 - b) Provincial Offences Court
 - c) Ontario Superior Court of Justice
 - d) License Appeal Tribunal

OBC References for Designers engaged in the business of providing design activities to the public:

OBC References for Firms engaged in the business of constructing on site, installing, repairing, servicing, cleaning or emptying sewage systems:

OBC References for Registered Code Agencies:

End of day 1



PUBLIC REGISTER INFORMATION

The duty to establish and maintain a public register which lists the qualifications of BCA practitioners and information in respect of registered persons has been assigned to the Director under the provisions of Subclause 34.-(1) 34. vii. of the *Building Code Act*.

EXERCISE #8 - PUBLIC REGISTER INFORMATION

To complete this exercise you will need to consult Division C, Subsections 3.1.8. in the case of Building Officials, 3.2.6. in the case of Designers engaged in the business of providing design activities to the public and other designers who are not engaged in the business of providing design activities to the public or are exempt from registration, 3.3.4. in the case of persons (business entities/firms) engaged in the business of constructing on site, installing, repairing, servicing, cleaning or emptying sewage systems and 3.4.4. in the case of Registered Code Agencies.

 For Chief Building Officials, Inspectors who have the same powers as a CBO in relation to Sewage Systems or Plumbing and Inspectors, complete the following Table by inserting the Division C reference for the stated requirement.

Public Register Information for: - Chief Building Officials - I/CBO-P and I/CBO-SS - Inspectors	OBC Div. C REFERENCE
The name of the Building Official	
The Building Official's Building Code Identification Number (BCIN)	
The name of each Principal Authority that has appointed the Building Official	
The qualifications of the Building Official	

 For Designers engaged in the business of providing design activities to the public complete the following Table by inserting the Division C reference for the stated requirement. (Registered Person=Firm=Business Entity*)

Public Register Information for: - Designers engaged in the business of providing design activities to the public	OBC Div. C REFERENCE
The name of the registered person*	
The registered person's* Building Code Identification Number (BCIN)	
The business address of the registered person*	
The Classes of Registration of the registered person* under Column 2 of Table 3.5.2.1. of Division C	
The names of the persons who will review and take responsibility for design activities on behalf of the registered person* in each class of registration	
The Building Code Identification Number (BCIN) of each person who will review and take responsibility for design activities on behalf of the registered person*	

 For Other Designers not engaged in the business of providing design activities to the public, or exempt from registration complete the following Table by inserting the Division C reference for the stated requirement.

Public Register Information for: - Other Designers not engaged in the business of providing design activities to the public, or exempt from registration	OBC Div. C REFERENCE
The name of the Other Designer	
The Other Designer's Building Code Identification Number (BCIN)	
The qualifications of the Other Designer who will review and take responsibility for design activities	

 For persons engaged in the business of constructing on site, installing, repairing, servicing, cleaning or emptying sewage systems complete the following Table by inserting the Division C reference for the stated requirement. (Registered Person=Firm=Business Entity*)

Public Register Information for: - Persons* engaged in the business of constructing on site, installing, repairing, servicing, cleaning or emptying sewage systems	OBC Div. C REFERENCE
The name of the registered person*	
The registered person's* Building Code Identification Number (BCIN)	
The business address of the registered person*	
The names of the persons (installer supervisor) who will supervise the construction on site, installing, repairing, servicing, cleaning or emptying sewage systems on behalf of the registered person*	
The Building Code Identification Number (BCIN) of each person who will supervise the construction on site, installing, repairing, servicing, cleaning or emptying sewage systems on behalf of the registered person*	

 For Registered Code Agencies complete the following Table by inserting the Division C reference for the stated requirement. (Registered Code Agency=Registered Person=Firm=Business Entity*)

Public Register Information for: - Registered Code Agencies	OBC Div. C REFERENCE
The name of the registered person*	
The registered person's* Building Code Identification Number (BCIN)	
The business address of the registered person*	
The Classes of Registration of the registered person* under Column 1 of Table 3.5.2.2. of Division C	
For each Class of Registration the names and the Building Code Identification Number (BCIN) of the persons who will exercise powers and perform functions under the BCA on behalf of the registered person*	



PUBLIC REGISTER INFORMATION ON QUALIFICATION AND REGISTRATION TRACKING SYSTEM (QuARTS)

The Public Register information that you just identified can be found on the building code website under the heading QuARTS. The Qualification and Registration Tracking System only provides the information of persons who have registered or filed their qualifications with the Director. The site is bilingual, English and French, and you can select the language of your choice.

It is not recommended that you bookmark QuARTS as one of your favourites. If you bookmark QuARTS, when technical difficulties are experienced with the building code website, you will by-pass any posted message on the availability or use of QuARTS.

The "Search Public Register" option is available to all persons who have access to the building code website at http://www.ontario.ca/buildingcode. To get to the Public Register, left click on the "QuaRTS" icon or left click on "Qualification & Registration", scroll down and left click on "QuARTS - Online Application and Public Register"

After you have read:

- What is QuARTS?
- Who should use QuARTS?
- What is the status of QuARTS?
- What are Building Code Qualification Requirements?

Left click on any QuARTS, left click on "English" and left click Search Public Register. If you know the Surname of the person, or the name of the organization or the person's BCIN. At the organization query box, you may enter the name of the Principal Authority to view the qualifications of appointed staff.

Existing users can log on to QuARTS to:

- 1- Apply to write an exam
- 2- Look up your scheduled exams
- 3- Look up your exam results
- 4- File qualifications, register or renew registration with the Director
- 5- Update the personal information of qualified and registered persons

First time users, who have a BCIN, scroll down to and left click on Request Userid/Password and follow instructions to obtain Userid and a password. A Userid and a password will be returned to you to enable you to log on to QuARTS to perform any of the five functions described in the previous paragraph.

QUALIFICATIONS FOR INTERN INSPECTORS

Inspectors who do not meet the requirements for qualification under Div. C, Article 3.1.4.1. may become qualified as "Intern Inspectors" under the provisions of Div. C, Article 3.1.4.2.

Accordingly, an Intern Inspector is permitted to carry out supervised plans review and supervised inspections if he/she is:

- enrolled in an internship program approved by the Minister, [Div. C, Clause 3.1.4.2.(1)(a)]

and

 supervised by a CBO or an Inspector who meets the Category of Qualification in respect of which the Intern Inspector will exercise powers and perform duties under the Building Code Act.

[Div. C, Clause 3.1.4.2.(1)(b)]

The authority of an Intern Inspector to make orders under the Building Code Act is limited to:

- an OTC under Subsection 12.-(2)

and

-an ONTCOE under Subsection 13.-(1). [Div. C, Sentence 3.1.4.2.(2)]

The Intern Inspector will be able to undertake supervised inspections except (**not including**) the inspection:

 of footings and foundations prior to the commencement of backfilling [see Div. C, Clause 1.3.5.1.(2)(b)]
 [Div. C, Clause 3.1.4.2.(3)(a)]

and

 to permit the occupancy of an unfinished building under Div. C, Subsection 1.3.3. [see Div. C, Clause 1.3.5.1.(2)(n)]
 [Div. C, Clause 3.1.4.2.(3)(b)]

Currently, the internship program approved by the Minister is administered by the Ontario Building Officials Association (OBOA). For further information about the internship program consult OBOA's website at http://www.oboa.on.ca

EXERCISE #9 - REVIEW OF MODULE FOUR

This is a discussion exercise to review the subject matter contained in this module. In the space provided under each heading, note any comments, concerns or questions. During the course, the facilitator will respond to any comment, question or concern you may have. All references are in Division C unless otherwise noted.

Facilitator/Self-Study Participant Note: Row House versus Townhouse

The terms "row house" and "town house" are synonymous terms. They have been included simply to capture the common terms used in the industry; in other words, to be as allinclusive as possible.

TYPE OF BUILDING - COLUMN 4 OF TABLE 3.5.2.1.

Row 2 – Small Buildings: Row 3 – Large Buildings: Row 4 – Complex Buildings: Row 5 – Plumbing - House: Row 6 – Plumbing - All Buildings: Row 7 – HVAC - House:	Row 1 – House:
Row 4 – Complex Buildings: Row 5 – Plumbing - House: Row 6 – Plumbing - All Buildings: Row 7 – HVAC - House:	
Row 5 – Plumbing - House: Row 6 – Plumbing - All Buildings: Row 7 – HVAC - House:	Row 3 – Large Buildings:
Row 6 – Plumbing - All Buildings: Row 7 – HVAC - House:	
Row 7 – HVAC - House:	Row 5 – Plumbing - House:
	Row 6 – Plumbing - All Buildings:
Row 8 – Building Services:	Row 7 – HVAC - House:
	Row 8 – Building Services:

out the duties and powers of a RCA and the plans review and inspection activities on behalf of the RCA, including Architects and Professional Engineers.

the Ar wh Ro	egistration = Qualified Staff. Here we have registration without eneed for liability insurance. Qualified Staff, including chitects and Professional Engineers are Installer Supervisors to have successfully completed the examination associated withow 10 of Table 3.5.2.1. or had acquired the qualifications under ause 2.12.4.6.(1)(a) of O. Reg. 403/97 as it read on August 31 103.
PF	EGISTRATION AND QUALIFICATIONS FOR ROFESSIONAL ENGINEERS AS DESIGNERS AND THE ECISION OF THE DIVISIONAL COURT
Co	ourt of Justice decided as follows in the case of the "Association Professional Engineers of Ontario v. Ontario (Municipal Affairs
of an	May 17, 2007 the Divisional Court of the Ontario Superior ourt of Justice decided as follows in the case of the "Association Professional Engineers of Ontario v. Ontario (Municipal Affairs ad Housing) that it had heard on October 26-27, 2006. Article 2.3.1.1 [now 1.2.1.1. of Division C] of the Building Code is not authorized by s. 34(1) 10 of the Building Code Act and is invalid to the extent that it purports to allocate responsibility for designs between professional engineers and architects.

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	ne Government of Ontario did not seek leave to appeal the cision of the Divisional Court.
_	Order to follow accordingly. While relief is only available to the applicant professional engineers in this case, in my opinion the analysis of these reasons for judgement applies equally to the intervenor architects.
4.	Article 2.17 [now 3.2. of Division C] of the Building Code conflicts with the exclusive regulatory jurisdiction of the PEO and does not apply to any holder of any licence or certificate issued under the <i>Professional Engineers Act</i> .
_	the exclusive regulatory jurisdiction of the PEO and do not apply to any licence or certificate holder under the <i>Professional Engineers Act</i> .

DIVISIONAL COURT

As a result of the decision of the Divisional Court, the Ontario Association of Architects (OAA) has notified the Attorney General and the Minister of Municipal Affairs and Housing of OAA's termination of the Memorandum of Understanding that outlined the parameters of OAA's "parallel system" for qualification and registration regarding knowledge of the Building Code Act and Ontario Building Code by Architects.

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CATE	GORIES OF QUALIFICATIONS: for individuals
	IIT BCA and OBC EXAMINATION SYLLABI for the control of the control
Divisio	including Architects and Professional Engineers on C, Clause 3.1.2.1.(1)(a) Process Examination on powers and duties of a CBO.
Divisio 3.5.2.1	, including Architects and Professional Engineers on C, 3.1.2.1.(1)(b)→3.1.4.1.(1)(a)→Column 3 – Tabo. As above + whatever Technical Examination(s) for to act as an Inspector.
	-P, including Architects and Professional Engineers on C, 3.1.2.1.(1)(a) and (b)→3.1.4.1.(1)(a)→Row 5 or 6

I/CBO-SS, including Architects and Professional Engineers – Division C, 3.1.2.1.(1)(a) and (b)→3.1.4.1.(1)(a)→Row 10 – Table 3.5.2.1.

Technical qualifications of I/CBO-SS acquired prior to August 31, 2003 are continued.

I/CBO-SS appointed prior to January 1, 2006 with the technical qualifications acquired prior to August 31, 2003 must successfully complete the Legal/Process Examination on the powers and duties of a Chief Building Official

I/CBO-SS appointed after August 31, 2003 must successfully complete the Legal/Process Examination on the powers and duties of a CBO +, if performing plans examination and inspection activities, Row 10 of Table 3.5.2.1.

Inspectors as Supervisors and Managers of Inspectors, including Architects and Professional Engineers – Division C, 3.1.3.1.(1)(a) and (b)→Column 3 – Table 3.5.2.1. Legal/Process Examination on the powers and duties of a CBO + any one category of technical qualification from Table 3.5.2.1.

All types of Inspectors and Fire Chiefs as OBC Inspectors under Division C, Subsection 1.3.4., including Architects and Professional Engineers – 3.1.4.1.(1)(a) → Column 3 – Table 3.5.2.1.

For Sewage System Inspectors, technical qualifications acquired prior to August 31, 2003 are continued.

For Sewage System Inspectors appointed prior to January 1, 2006 with the technical qualifications acquired prior to August 31, 2003 they must successfully complete the General Legal/Process Examination or the Legal/Process Examination on the powers and duties of a Chief Building Official

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Sewage System Inspectors appointed after August 31, 2003 must successfully complete the General Legal/Process Examination or the Legal/Process Examination on the powers and duties of a CBO + Row 10 of Table 3.5.2.1. Inspectors, other than Sewage System Inspectors, qualify by successfully completing the General Legal/Process Examination or the Legal/Process Examination on the powers and duties of a CBO plus whatever Technical Examination(s) from Table 3.5.2.1. Not including Architects and Professional Engineers. Designers engaged in the business of providing design activities to the public and Other Designers who are not engaged in the business of providing design activities to the public or are exempt from registration-Division C. Column 3 of Table 3.5.2.1. Designers must successfully complete any of the four Legal/Process Examinations plus whatever Technical Examination(s) from Table 3.5.2.1. Sewage Systems Installer Supervisors, including Architects and Professional Engineers - Division C, 3.3.3.2.(1)(a) Qualifications of Installer Supervisors acquired prior to January 1, 2006 are continued. Since January 1, 2006 Installer Supervisors including Architects and Professional Engineers qualify by successfully completing the Ministry Examination associated with Row 10 of Table 3.5.2.1. attesting of the person's knowledge of the BCA and the OBC for the construction, maintenance and operation of sewage systems.

	ess Examination on powers and duties of a RCA
review ar Professio	d Persons authorized by RCA to carry out plans of inspection activities, including Architects and nal Engineers – Division C, 3.4.3.2.(1)(b) and (c) − 2 and 3 of Table 3.5.2.2. → Rows 1 to 10 of Table
on powers	egal/Process Examination or Legal/Process Examination and duties of a RCA, if not acquired under the previous + whatever Technical Examination(s) from Table
The "G	rouping Effect" of various Category o
	tion in Table 3.5.2.1. of Division C
	on in "Plumbing - All Buildings", "Building Services" Structural", "On-site Sewage Systems", "Detection

Qualification under Row 12 "Fire Protection" has a "grouping effect" in relation to "Houses", "Small Buildings", Large Buildings and "Complex Buildings". It is a unique category of qualifications for those practitioners that do not need the full complement of qualifications under Row 8 "Building Services" and "Houses" "Small Buildings", Large Buildings" or "Complex Buildings", as the case may be. It is a unique Category of Qualification and has no "stacking effect" nor is it a "subcategory" of any other Category of Qualification.
The "Stacking Effect" of various Category of Qualification in Table 3.5.2.1. of Division C Qualification in the Small Buildings Category of Qualification has a "stacking effect" in the sense that a review of Subclause (b)(i) of Row 2 of Table 3.5.2.1. reveals that qualification under Small Buildings includes Row 1 House.
Qualification in the Complex Buildings Category of Qualification has a "stacking effect" in the sense that a review of the examination program administered or authorized by the Ministry of Municipal Affairs and Housing, by way of the Examination Syllabi, indicates that qualification under Complex Buildings includes qualification under all of Part 3 of Division B, thus qualification in Large Buildings, Row 3 of Table 3.5.2.1.
In addition to the "grouping effect" of qualifications under Row 6 "Plumbing - All Buildings", qualification in the "Plumbing - Al Buildings" Category of Qualification also has a "stacking effect" in the sense that it includes qualification under Row 5 "Plumbing House".

n addition to the "grouping effect" of qualifications under Row Building Services" successful completion of the "Buildin Services" examination has a "stacking effect" in the sense that includes qualification under both Row 7 "HVAC - House" and Roll 1 "Detection, Lighting and Power".
For those practitioners that do not require the full complement qualifications under Row 8 "Building Services" they may elect qualify themselves under the provisions of Row 11, "Detection Lighting and Power"; which is a "subcategory" of qualification under Row 8 "Building Services". Similarly, Row 7 "HVAC House" is also a "subcategory" of qualifications under Row Building Services".
SUSPENSION, REVOCATION, REFUSAL TO REGISTER O
RENEW A REGISTRATION
Not including Architects and Professional Engineer Designers engaged in the business of providing designativities to the public – Division C, 3.2.4.9. and 3.2.4.10.
Sewage Systems Installers, including Architects ar Professional Engineers – Division C, 3.3.3.9.
Registered Code Agencies, including Architects ar
Professional Engineers – Division C, 3.4.3.9. and 3.4.3.10.

ADVANCED STANDING - REVIEW SECTION 3.0 of "Pand Procedures Examination Program				
and Procedu	ires Exam	ination Pro	gram	

STOP

MODULE FIVE - THE PERMIT APPLICATION AND ISSUANCE PROCESS

Facilitator Self-study Participant Note: This Madule contains a number of Decision Making Flow Charts, they are included as job-aids and to illustrate and clarify the processes. These Flow Charts are meant to be selfexplanatory so you should not spend too much time going over them; simply overview them so that you know how to read them in the sequence of the steps involved. The flow charts are general in nature and are not meant to reflect every possible variation of application.

INTRODUCTION

In Modules Two and Three we learned that, except where otherwise provided by the BCA, the Council of the Municipality is responsible for the enforcement of the BCA and the provisions of the OBC and that Council can select the enforcement model that best suits the needs and means of the Municipality. In this module, we will untangle the complexities of the BCA in achieving the purpose of the building code in dealing with the issuance of permits for:

- ✓ construction of a building or part thereof,
- ✓ demolition of a building or part thereof, and
- ✓ change of use of a building or part thereof.

OBJECTIVES

In this Module, you will:

- → Determine when the BCA requires a permit to be issued by the CBO.
- Summarize the design activities that are exempt from the requirements of designer qualifications.
- understand the effect the decision of the Divisional Court on Clause 8.-(2)(c) of the Building Code Act, when the designer is, as the case may be, a licence or certificate holder under the Architects Act or the Professional Engineers Act
- * Examine the permit application and issuance process with and without the involvement of a RCA.
- Review the process for an application for a Conditional Permit,
- Determine the requirements for a Change-Of-Use Permit,
- Acquire the knowledge to recognize the approval process of innovative materials, systems and building designs other than alternative solutions which will be dealt with in Module Twelve

BUILDING and DEMOLITION PERMITS UNDER SUBSECTION 8.-(1) of the BCA

According to Subsection 8.-(1) of the BCA:

No person shall construct or demolish a building or cause a building to be constructed or demolished unless a permit has been issued therefor by the Chief Building Official.

WHEN IS A BUILDING OR DEMOLITION PERMIT REQUIRED?

Facilitator Self-Study
Participant Note: The
answers to the following
questions assist the
Building Code Act
practitioner in determining
if a building or demolition
permit is required.

Before the determination of the need for a permit under Subsection 8.-(1) of the BCA can be made, a number of questions must first be answered.

1. Is there CONSTRUCTION?

According to Subsection 1.-(1) of the BCA, "construct" means:

to do anything in the erection, installation, extension or material alteration or repair of a building and includes the installation of a building unit fabricated or moved from elsewhere; and, "construction" has a corresponding meaning.

Although the BCA and the OBC do not define a "material alteration" or "material repair", we can say that the word "material" is an adjective and not a noun and is synonymous to "essential", "important", "relevant" and "substantial".

In determining if there is a "material alteration" or a "material repair", ask yourself: "Does the proposed alteration or repair have the potential of creating a hazard for which the OBC has provisions that were designed to afford protection from such hazard? In other words, we can define the phrase as follows:

a material alteration is an alteration that matters in terms of potentially creating the hazards that the OBC was designed to protect people and buildings from being exposed to such hazards For example; the installation of a solid fuel-burning appliance (wood stove) in a existing building is a "material alteration". The installation is regulated by the OBC, see Div. C, Sentences 6.2.1.4.(1) and (5), 9.21.1.3.(2), 9.22.10.2.(1) and 9.33.1.2.(1). To ensure a safe installation, it is essential that a permit be obtained and inspections be done.

2. Is there DEMOLITION?

According to Subsection 1.-(1) of the BCA "demolish" means:

to do anything in the removal of a building or any material part thereof and "demolition" has a corresponding meaning.

3. Is it a BUILDING?

Subsection 1.-(1) of the Act states that "building" means:

- a) a structure occupying an area greater than ten square metres consisting of a wall, roof and floor or any of them or a structural system serving the function thereof including all plumbing, works, fixtures and service systems appurtenant thereto,
- a structure occupying an area of ten square metres or less that contains plumbing, including the plumbing appurtenant thereto,
- c) plumbing not located in a structure,
- c.1) a sewage system, or
- d) structures designated in the OBC.

3. (a) What is PLUMBING?

According to Subsection 1.-(1) of the BCA, "plumbing" means:

- a drainage system,
- a venting system, and
- a water system, or parts thereof, as defined in Div. A, Clause 1.4.1.2.(1)(b) of the OBC.

Facilitator/Self-Study
Participant Note: any two
dimensional wall, roof or
floor that "takes up or
fills" an area greater than
10m² is a building. Under
the Building Code Act, a
building need not be threedimensional and includes
plumbing not located in a
structure, a sewage system
and a designated structure
which are not "traditional"
buildings.

3. (b) What is a SEWAGE SYSTEM?

According to Div. A, Clause 1.4.1.2.(1)(b), sewage system means:

- a) a chemical toilet, an incinerating toilet, a recirculating toilet, a self-contained portable toilet and all forms of privy including a portable privy, an earth pit privy, a pail privy, a privy vault and a composting toilet system,
- b) a greywater system,
- c) a cesspool,
- d) a leaching bed system, or
- e) a system which requires or uses a holding tank for the retention of hauled sewage at the site where it is produced prior to its collection by a hauled sewage system,

where these

- f) have a design capacity of 10 000 litres per day or less,
- g) have, in total, a design capacity of 10 000 litres per day or less where more than one of these are located on a lot or parcel of land, and
- h) are located wholly within the boundaries of the lot or parcel of land on which is located the building or buildings which they serve.

3. (c) What is a DESIGNATED STRUCTURE?

Designated structures are generally identified as buildings in Subsection 1.-(1) of the *Building Code Act*. Designated structures are specifically identified in Div. A, Clauses 1.3.1.1.(1)(a) to (I). Inturn, Div. A, Clause 1.1.2.2.(2)(c) requires designated structures to be designed in accordance with Div. B, Part 4, "Structural Design".

4. Is there a BCA exception from the requirement for a permit under Section 8 of the BCA?

Subsection 1.-(2) of the BCA specifically excludes structures used directly in the extraction of ore from a mine.

5. Is there an OBC exception from the requirement for a permit under Section 8 of the BCA?

A review of Sentence 1.3.1.1.(1) of Division C, informs us that a person is exempt from the requirement to obtain a permit under Section 8 of the BCA for the following activities:

- 1. for the demolition of a building located on a farm,
- 2. for the construction of a Class 1 sewage system, or
- not including the construction of a sewage system, for the construction or demolition of a building in territory without municipal organization.

NOTA BENE:

While persons are exempt from the requirement to obtain a permit, they are not exempt from complying with the technical provisions of Division B of the Code. Compliance is on an "honour system" because plans review and inspection activities are not prescribed.

6. Is the building a TENT or a group of TENTS?

In the case of a tent or a group of tents, Div. C, Sentence 1.3.1.1.(5) informs us that a person is **not only exempt** from the requirement to obtain a permit under Section 8 of the BCA **but also exempt** from compliance with the OBC provided that the tent or group of tents is:

- 1. not more than 60 m² in aggregate ground area,
- 2. not attached to a building, and
- 3. constructed more than 3 m from other structures.

7. Is the proposed building / construction / demolition within municipal jurisdiction?

Under the *Constitution Act*, 1982, some legislative powers are within the exclusive domain of the Government of Canada, to the exclusion of Provincial Legislatures. For example, Navigation and Shipping and Aeronautics are under federal jurisdiction. As such, buildings associated with airports and railways are not subject to the *Building Code Act*.

Similarly, by way of Section 71 of the *Legislation Act 2006* we are informed that the BCA does not apply to buildings owned by the Crown (Province of Ontario).

The Courts have indicated that a "Crown Agency" within the meaning of Section 1 of the *Crown Agency Act* or an emanation, servant or agent of the Crown at common law is not subject to a provincial statute which does not expressly bind the Crown in general or the Crown Agency in particular (R. v. O.L.R.B., Ex parte Ontario Housing Corporation [1971] 2 O.R. 723 at 724-5 (Ont. H.C.)).

According to Section 1 of the *Crown Agency Act* R.S.O. 1990, chapter C. 48, Crown Agency means a:

board, commission, railway, public utility, university, manufactory, company or agency, owned, controlled or operated by Her Majesty in right of Ontario, or by the Government of Ontario, or under the authority of the Legislature or the Lieutenant Governor in Council.

Questions about the applicability of the BCA to a project where the Province of Ontario or the Federal Government is involved should be directed to your lawyer. It is beyond the scope of this course to establish guidelines or rules to arrive at this determination.

SUMMARY OF QUESTIONS TO DETERMINE IF A PERMIT IS REQUIRED UNDER SECTION 8 OF THE BCA

oes	the proposed project involve:
	construction?
	demolition?
	a building?
	plumbing?
	a sewage system?
	a designated structure?
	an exemption for a permit under the BCA/OBC?
	the Crown or a Crown Agency?
	a situation outside municipal jurisdiction?

EXERCISE # 1- IS A PERMIT REQUIRED?

Scenarios under Subsection 8.-(1) of the BCA

In addition to what you already know, consider Subsections 1.-(1) and 8.-(1) of the BCA, Div. A, Subsection 1.1.2., "Application of Division B", Article 1.3.1.1., "Designated Structures", and from Div. C, Article 1.3.1.1., "Requirements for Permits". For each scenario determine if a permit is required under Subsection 8.-(1) of the BCA. Provide references and explain your answer. References to the technical provisions of Division B and case law that support the answer have been provided for your consideration as margin notes.

	BCA References:
2.	A Municipal Park washroom, with plumbing, occupying an area less than 10 m ² .
	BCA References:
3.	A Provincial Park washroom, with plumbing, occupying an area less than 10 m ² .

Facilitator Self-study Participant Note: Q. # 4. Some may disagree with the answer provided, in such case, support and discuss your position. This is a subject that should be addressed by the lawver of the municipality and an operational policy established in order to provide a defensible position when it is decided that a permit is not required for excavation for a building. Consider Kahlen v. Vogel Construction Ltd., [2006] O.J. No. 521 (S.C.J.) and R. V. Abalon Construction Ltd., M.J. No. 731 (Prov. Ct.) Before making such a decision.

In 1986, a MAH Legal Branch Counsel opinion concluded that a permit is necessary under Section 8 of the BCA before excavation for a building can be commenced.

For Q # 6 The Court of Appeal held that the installation of insulation into the exterior walls of a house intended for use on a year-round basis constitutes a material alteration to that building and thus falls within the meaning of "construction" (Regina v. King Insulation Services Ltd., February 5, 1981).[#7Div. B, 9.36.2.1.]

4.	Excavation for the construction of a building.					
	BCA References:					
5.	A retaining wall 1.2 m in exposed height and adjacent to a sidewalk providing access to a building.					
	BCA and OBC References:					
6.	Installation of insulation in the exterior walls of a century-old house intended for use on a continuing basis during the wintermonths.					
	BCA & case law Reference:					
7.	Installation of insulation in the exterior walls of a three year old cottage used as a seasonal recreational building.					
	BCA and OBC Reference:					

Facilitator Self-Study
Participant Note: Re-Matters of
lederal turisdiction. In
Johanneson v. West St. Paul
(1952) I SCR 292, the Supreme
Court of Canada held that
aeronautics was a matter of
national concern and that only
the federal Parliament can
legislate in respect of
aeronautics. The fact that the
land in question was owned
privately was not relevant to the
Courts.

In Orangeville Airport Ltd. v. the Town of Caledon (1976) 11 O.R. (2d) 546. OCA, the construction of five hangers on privately owned land was authorized on land zoned "agricultural". The court said, the result could have been different if the airport corporation had sought to erect on airport lands something entirely unrelated to the operation of an airport. But that is not the case.

In Township of Shuniah v. Richard et al (1982) 19 MPLR 71.OSC, the defendants occupied land owned by the Director, Veterans' Land Act (federal) and knowingly constructed a residence on the land in violation of the municipality's zoning bylaw and without a permit under the BCA. The municipality applied for and was granted a mandatory injunction requiring the defendants to demolish the residence. The Court held that the zoning by-law cannot bind the Crown or a Crown agent such as the Director. This immunity of the Crown extended to the defendants who were in possession of Crown land The Court, however, stated that the BCA does not purport to govern or regulate land use in the same way as a zoning by-law. The BCA is aimed at individuals and attempts to regulate and govern the activities and licencing of persons. Consequently, the Court held that the BCA applied to the defendants and ordered them to demolish the residence for failing to obtain a building permit when they knew it was required.

8.	Installation of a wood stove and associated chimney in an existing building.					
	BCA References:					
9.	Demolition of the herdsman house on a farm.					
	OBC Reference:					
10	. Construction and demolition of an Aeroplane Hanger on Crown Land and privately owned land.					
11	. Construction of an Airport Terminal Building with food premises, retail areas, offices and car rental outlets.					
12	Consult the list of "Designated Structures" in Clauses 1.3.1.1.(1)(a) to (I) and in the space provided, note any comment, question or concern to be addressed by the facilitator during the delivery of the course.					
=						
=						
(

STOP

CONSTRUCTION AND DEMOLITION PERMITS UNDER SUBSECTION 8.-(1) OF THE BCA AND SECTION 1.3., "PERMITS AND INSPECTIONS" OF DIVISION C

Clause7.-(1)(a) of the BCA empowers the Principal Authority to prescribe, in its By-law, Resolution or Regulation, as the case may be, classes of permits including permits with respect to any stage of construction or demolition.

Thus, various types of permits that are issued by the CBO to authorize work under Subsection 8.-(1) of the BCA include:

- ✓ Building Permit to construct a building.
- ✓ Building Permit to Repair/Add to/Alter a building,
- ✓ Demolition Permit.
- ✓ Plumbing Permit,
- ✓ HVAC Permit, and
- ✓ Partial Building Permit, to name just a few.

In the next few exercises, we will deal with the application and issuance process for a permit to:

- ✓ construct, as required by Subsection 8.-(1) of the BCA, and
 - ✓ demolish, as required by Subsection 8.-(1) of the BCA.

THE APPLICATION FOR A PERMIT TO CONSTRUCT OR DEMOLISH UNDER SUBSECTION 8.-(1) OF THE BCA

According to Subsection 8.-(1.1) of the BCA:

an application for a permit to construct or demolish a building or part thereof may be made by a person specified by regulation and the prescribed form must be used and be accompanied by the documents and information specified by regulation.

Division C, Sentences 1.3.1.2.(1) and (2) state that the application for a permit to construct or demolish must be made:

by the owner of the property or the authorized agent of the owner.

and

in the form approved by the Minister.

Facilitator Self-Study Participant Note: Insert cross-references as you deem appropriate.

THE COMPLETE PERMIT APPLICATION

Sentence 1.3.1.3.(5) of Division C informs us that an application for a permit under Subsection 8.-(1) of the BCA is deemed complete and ready to be submitted to the Chief Building Official for the plans review activity when the application:

- 1. is in the form approved by the Minister,
- is signed by the owner or the authorized agent of the owner.
- has all its applicable fields and required schedules completed,
- has all indicated attachments submitted with the application, and
- is accompanied by the types and quantities of plans and specifications prescribed in the instrument enacted under Section 7 of the BCA by the Principal Authority.

WHEN MUST THE PERMIT UNDER SUBSECTION 8.-(1) OF THE BUILDING CODE ACT BE ISSUED?

According to Subsection 8.-(2.2) of the BCA:

when an application for a permit contains the prescribed information, the CBO is required to determine <u>within</u> the <u>period prescribed by regulation</u>, whether to issue the permit or to refuse to issue it.

The <u>prescribed period</u> within which a permit is to be issued or refused is found in Article and Table 1.3.1.3. of Division C.

During this <u>prescribed period</u>, Subsection 8.-(2) of the BCA imposes a duty upon the CBO to issue the Building or Demolition Permit, required by Subsection 8.-(1) of the BCA, <u>or</u> when the application fails to satisfy the conditions of Clauses 8.-(2)(a) to (f), to refuse it and inform the applicant of all of the reasons for the refusal as directed by Subsections 8.-(2.2) and (2.3) of the BCA and Clauses 1.3.1.3.(1)(a) and (b) of Division C.

WHEN DOES THE PRESCRIBED PERIOD START?

Before we consider the review process of the application within the prescribed period, as provided by Sentences 1.3.1.3.(1) to (4) and Table 1.3.1.3. of Division C, within which the CBO must determine whether to issue the permit or refuse to issue it, we have to determine when the prescribed period starts.

EXERCISE # 2 - THE PRESCRIBED PERIOD BEGINS WHEN ...

To complete this exercise, you will need to consult Sentences 1.3.1.3.(6) to (9) of Division C. As always, provide references as prompted. All references are to Division C unless otherwise noted.

- As a general rule, the prescribed period of Sentences 1.3.1.3.(1) to (3), for purposes of an application for a permit under Subsection 8.-(1) of the BCA, begins on the day after:
 - a) the day on which an application meeting the requirements of Sentence 1.3.1.3.(5) is made
 - b) the day on which the payment of fees required to be paid on application is made
 - the day on which an application meeting the requirements of Sentence 1.3.1.3.(5) is made or the day on which the payment of fees required to be paid on application is made
 - d) the day on which an application meeting the requirements of Sentence 1.3.1.3.(5) is made and the day on which the payment of fees required to be paid on application is made

OBC	References:				
000	100000000	 	 	 	_

- 2. When the same Principal Authority is responsible for the enforcement of the BCA and all of the provisions of the OBC, including the provisions of Part 8 Sewage Systems, the prescribed period of Sentences 1.3.1.3.(1) to (4), for purposes of an application for a permit under Subsection 8.-(1) of the BCA, begins on the day after:
 - a) the day on which an application meeting the requirements of Sentence 1.3.1.3.(5) is made
 - the day on which the payment of fees required to be paid on application is made
 - the day on which an application meeting the requirements of Sentence 1.3.1.3.(5) is made and the day on which the payment of fees required to be paid on application is made
 - d) the day on which an application meeting the requirements of Sentence 1.3.1.3.(5) is made or the day on which the payment of fees required to be paid on application is made

OBC	References:	
	1 1010101000.	

- 3. When a Principal Authority is responsible for the enforcement of the BCA and the provisions of the OBC, except the provisions of Part 8 Sewage Systems, which are enforced by another Principal Authority under the authority of Section 3.1 or 6.2 of the BCA, as the case may be, the prescribed period of Sentences 1.3.1.3.(1) to (4), for purposes of an application for a permit under Subsection 8.-(1) of the BCA, begins on the day after:
 - a) the day on which an application meeting the requirements of Sentence 1.3.1.3.(5) is made and the day on which the payment of fees required to be paid on application is made
 - b) the day on which an application meeting the requirements of Sentence 1.3.1.3.(5) is made or the day on which the payment of fees required to be paid on application is made
 - c) the day on which an application meeting the requirements of Sentence 1.3.1.3.(5) is made, the day on which the payment of fees required to be paid on application is made and the day on which the permit for the proposed construction or demolition of the sewage system is issued
 - d) the day on which an application meeting the requirements of Sentence 1.3.1.3.(5) is made, the day on which the payment of fees required to be paid on application is made or the day on which the permit for the proposed sewage system is issued

OBC References: _____

Participant Note: under Clause 7.-(1/tc) of the BCA, the Building by-law may provide for the payment of fees on two occasions, firstly on the application of a permit and secondly on issuance of the permit.

Facilitator | Self-Study

EXERCISE # 3THE BUILDING/DEMOLITION PERMIT APPLICATION REVIEW AND PERMIT ISSUANCE PROCESS - NO RCA

NOTE: An RCA never has a role to play in the case of a Demolition Permit under Subsection 8.-(1) of the BCA. [BCA Section 15.15 Functions of RCAs and Appointment of RCAs under Subsections 4.1-(2) and (4)]

Standard procedures apply. In this exercise, we will review the prescribed "Application for a Permit to Construct or Demolish", which includes the Schedules and the duty of a CBO to:

1. review the application against the requirements of Clauses 8.-(2)(a) to (f) of the BCA,

and

 Determine within the time prescribed in Article 1.3.1.3. of Division C whether to issue or to refuse to issue the permit as provided by Subsection 8.-(2.2) of the BCA,

and

- 3. when the permit is refused to inform the applicant, within the said prescribed time, of all of the reasons for the refusal of the permit as directed by Subsection 8.-(2.3) of the BCA.
- To satisfy Subsection 8.-(1.1) of the BCA, after June 30, 2005 the owner or the authorized agent of the owner who makes an application for a permit to construct or demolish will be compelled to use the form that is:
 - a) prescribed in the BCA
 - b) prescribed in the Building By-law enacted under Clause 7.-(1)(f) of the BCA
 - c) approved by the Chief Building Official
 - d) approved by the Minister of Municipal Affairs and Housing

OBC	References:			

Facilitator / Self-Study
Participant Note: A
reminder to write the
appropriate crossreferences in your copy of
the BCA and the OBC.

- According to the OBC, an application for a permit under Section 8 of the BCA may be made by the owner of the property on which the proposed construction or demolition is to take place. Accordingly, "owner" means:
 - a) the registered owner, a lessee and a mortgagee in possession
 - the person, individual or corporation who pays the municipal real property taxes on the property on which the proposed construction or demolition is to take place
 - c) the person for the time being managing or receiving the rent of the land or premises in connection with which the word is used, whether on the person's own account or as agent or trustee of any other person, or who would so receive the rent if such land and premises were let
 - d) a lessee or occupant of the property who, under the terms of a lease, is required to repair and maintain the property in accordance with the standards for the maintenance or occupancy of property

OBC Reference	
ODO REIGIETO	

- 3. By way of Subsection 8.-(1.1) of the BCA, Clause 1.3.1.2.(1)(b) of Division C informs us that the application for a permit under Section 8 may be made by the authorized agent of the owner. Consequently, when considering an application submitted by the "authorized agent of the owner", the CBO:
 - a) may request a written authorization from the owner
 - may not request a written authorization from the owner and must accept the application at face value
 - c) must request a written authorization from the owner
 - d) must not request a written authorization from the owner and must accept the application at face value

Facilitator/Self-Study
Participant Note: To obtain
a copy of the prescribed
application and schedules,
visit the Ontario Building
Code Website at
www.ontario.ca/buildingcode
left click on "Publications"
scroll down the menu and
left click on "Permit
Application Form" and
print.

Notice the absence of a field for any technical information related to the requirements of Div. B of the OBC. You will recall that under Subsection 1.1-(2) of the BCA, that it is the role of the Designer to provide the design in support of the application.

4. Consider the <u>Application for a Permit to Construct or Demolish</u> and Schedules 1 and 2. In the space provided, note any comments, questions or concerns. During the course, the facilitator will respond to any comment, question or concern you may have.

APPLICATION for a PERMIT to CONSTRUCT or DEMOLISH [see BCA 8.-(1.1) and Div. C, 1.3.1.2.(2)]

For use t	by Principal Authority
Applicatio	on submitted to:
FIELD A.	Project information
FIELD B.	Applicant [see BCA 8(1.1) and Div. C, 1.3.1.2.(1) and (3)]
FIELD C.	Owner (if different from applicant) [verified from Municipal Roll, lease, deed]

FIELD D.	Builder (optional)
FIELD E.	Purpose of application Under Description of proposed work, see Div. C, Sentences 1.3.1.1.(3) and (4) in the case of an application for a demolition permit.
FIELD F.	Tarion Warranty Corporation (Ontario New Home Warranty Program)

Facilitator/Self-Study
Participant Note: For
purposes of the applicable
law portion of Field G, the
Statutes and Regulations of
Ontario, prescribed in
Article 1.4.1.3. of Division
A can be downloaded from
http://www.e-laws.gov.on.ca

FIELD G. Attachments

- i. Applicable law: The CBO is responsible to verify the application against the applicable laws listed in Div. A, Article 1.4.1.3. When required approvals, from other authorities having jurisdiction, are not attached to confirm compliance with said "applicable law", such would form part of the reasons for the refusal of the permit.
- ii. Schedule 1 will be reviewed following the review of the Application for a Permit to Construct or Demolish.
- iii. Schedule 2 will be reviewed following the review of the Application for a Permit to Construct or Demolish.
- iv. The types and quantities of plans and specifications that must accompany the prescribed Application are as specified in the instrument of the Principal Authority enacted under the authority of Clause 7.-(1)(b) of the Building Code Act.

iv.	Not including Architects and professional Engineers, for a summary of the Designer information that must be included on any document relating to design activities, consult Div. C, Subclauses 3.2.4.7.(1)(f)(i) to (iv) for Designers engaged in the business of providing design activities to the public and Div. C, Subclauses 3.2.5.1.(1)(c)(i) to (iii) for Other Designers.
FIELD H.	Declaration of applicant
Schedule	e 1: Designer Information
not an Ar takes res	pleted Schedule 1 is required for each Designer who is rehitect or Professional Engineer and who reviews and ponsibility for design activities in respect of the project. 8(2)(c) and Div. C, 3.2.
FIELD A.	Project information Must match Field A. of the application
FIELD B.	Individual who is not an Architect or Professional Engineer and who reviews and takes responsibility for design activities See Div. C, 3.2.6. Public Register = QuARTS

	FIELD C.	Design activities undertaken by individual identified in Section B. [Div. C, Table 3.5.2.1., Col. 3, Categories of Qualifications] See Div. C, 3.2.6. Public Register = QuARTS
	FIELD D.	Declaration of Designer, who is not an Architect or Professional Engineer There are three options in this field. Option 1, when the design work was carried out by a firm engaged in the business of providing design activities to the public.
Facilitator Self-Study Participant Note: For Field D. design activities that are exempt from registration under Div. C. Sentences B.2.4.1.(3) and (4) and qualifications under Div. C. Sentence 3.2.5.1(2) will be		Option 2, when the design work was carried out by an Other Designer. Take note that the basis for exemption from registration must be shown.
tealt with by questions 12(a), (b) and (c).		Option 3, when the design work is exempt from registration and qualification, the basis for exemption from both registration and qualification must be shown. Take note that owners of detached houses, semi-detached houses, townhouses, row houses and associated ancillary buildings who submit their own designs may require assistance in identifying the exemptions from registration and qualifications.

Facilitator / Self-study Participant Note: When Architects and Professional Engineers are involved as Sewage System Installer or Supervisor they are subject to the legislation as any other person.	Schedule	2: Sewage System Installer Information See BCA Subsections 15.12-(1) and Div. C, Section 3.3. "Qualifications for Persons (business entity/firm) Engaged in the Business of Constructing On Site, Installing, Repairing, Servicing, Cleaning or Emptying Sewage Systems" and BCA 15.12-(3) "Duty to Notify the Chief Building Official"
	FIELD A.	Project information Must match Field A. of the application
	FIELD B.	Sewage system installer
	FIELD C.	Registered installer information (Where answer to B is "Yes") See Div. C, 3.3.4. Public Register — QuARTS
	FIELD D.	Qualified supervisor information (where answer to B is "Yes") See Div. C, 3.3.4. Public Register = QuARTS

FIELD E. Declaration o	f Ap	plicant:
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As evidenced by the text of Field E, Schedule 2 is to be submitted a second time, prior to construction of the Sewage System when the installer was not know at the time the original application was filed.

NOTA BENE:

Schedule 2 is not to be confused with Designer Information on Schedule 1. Design activities that are exempted from Registration under Div. C, Clauses 3.2.4.1.(3)(b) and (e) or qualifications under Div. C, Subclauses 3.2.5.1.(2)(d)(i) and (ii) are to be identified in FIELD D "Declaration of Designer" of Schedule 1: Designer Information.

 In the case when a Registered Code Agency is <u>NOT</u> involved, identify the circumstances when a Chief Building Official may refuse to issue the permit under the authority of the BCA.

Where a RCA is not involved, a Chief Building Official is empowered by the BCA to refuse to issue a permit to construct or demolish when:

*Facilitator/Self-Study Participant Note: Fire Safety matters may be responsibility of Inspector who is Fire Chief, see Div. C. Article 1.3.4.1.

A			
4.			

E		
J.	 	

BCA References: _	
DUA References.	

NOTA BENE:

The effect of Clause 8.-(2)(c) was modified by the decision of the Divisional Court on May 17, 2007, to exclude Architects and Professional Engineers.

 Clause 8.-(2)(a) of the BCA, says in part: "...the CBO shall issue the permit unless the proposed building, construction or demolition will contravene the OBC..."

Accordingly, this phrase of the BCA imposes a duty to:

- a) review plans and specifications to determine whether the proposed building, construction or demolition complies with the technical requirements of the OBC
- b) determine which plans and specifications must accompany the application
- c) determine if the plans and specifications are complete
- d) review the application, schedules, plans, specifications, sketches, drawings and graphic representations to determine whether the proposed building, construction or demolition complies with the requirements of the OBC

BCA	References:			
00, 1	110101011000.			

- 7. In deciding whether to issue or to refuse to issue a permit to construct or demolish under Subsection 8.-(1) of the BCA, the CBO must determine if the proposed building, construction or demolition, will contravene any other applicable law. For purposes of Section 8 of the BCA, the applicable law is listed in:
 - a) Division A, Sentence 1.4.1.3.(1)
 - b) Division B, Sentence 1.4.1.3.(1)
 - c) Division C, Sentence 1.4.1.3.(1)
 - d) Division A, Sentence 1.4.1.3.(2)

8. For purposes of Subsection 8.-(2.2) of the BCA, make a list of the prescribed information that will constitute a complete application, and start the clock for a determination whether to issue or refuse to issue a permit under Subsection 8.-(1) of the BCA when another principal authority is not involved with the enforcement of Part 8 Sewage Systems.

An application for a permit under Section 8 of the BCA is complete and starts the clock that determines the prescribed time within which the CBO must decide to issue or refuse the permit, when:

- 1. _____
- 2. _____
- 3. _____
- 4. _____
- 5. _____
- 6. _____
 - OBC Reference: _____

- 9. For purposes of Subsection 8.-(2.2) of the BCA, the prescribed time period within which the CBO must determine whether to issue or refuse an application for a permit under Subsection 8.-(1) of the BCA, is found in:
 - a) Div. A, Article 1.3.1.3. and Table 1.3.1.3.
 - b) Div. B, Article 1.3.1.3. and Table 1.3.1.3.
 - c) Div. C, Article 1.3.1.3. and Table 1.3.1.3.
 - d) Div. A, Article 3.2.1.1. and Table 3.2.1.1.
- 10. For purposes of Subsection 8.-(2.2) of the BCA, the time period for deciding whether to issue the permit or refuse to issue it (not an application for a Conditional Permit) in the case of a detached house that is to be provided with an onsite sewage system when the same principal authority is responsible for the enforcement of the provisions of Part 8 Sewage Systems, is:
 - a) 5 days
 - b) 10 days
 - c) 15 days
 - d) 20 days

OBC	References:	

- THE PERMIT APPLICATION & ISSUANCE PROCESS - Page 26

11. For purposes of Subsection 8.-(2.2) of the BCA, make a list of the-prescribed information that will constitute a complete application, and start the clock for a determination whether to issue or refuse to issue a permit under Subsection 8.-(1) of the BCA when another principal authority is involved with the enforcement of Part 8 Sewage Systems.

An application, for a permit under Subsection 8.-(1) of the BCA, is complete and starts the clock that determines the prescribed time within which the CBO must decide to issue or refuse the permit, when:

1.	
2.	
3.	
4.	
5.	
6.	
7.	
	DBC References:

Facilitator / Self-Study Participant Note: Question 12.(a). (b) and (c) make a good job aid to help clarify when a particular type of design activity is exempt from the requirement for qualifications. Note for Designers engaged in the business of providing design activities to the public, registration is a required qualification, see Div. C. Clause 3.2.4.1.(1)(a)

12.(a) Consider Clause 8.-(2)(c) and Subsection 15.11-(5) of the BCA and Division C, Sentences 3.2.2.1.(1), 3.2.2.2.(1), 3.2.4.1.(3) and 3.2.5.1.(2) and complete the following Table by inserting the appropriate reference for the design activities that are exempt from Designer Qualifications under Div. C, Section 3.2. "Qualifications for Designers".

to qual	gn activities that are EXEMPT from the requirement have designer registration under 3.2.4. and ifications under 3.2.5. when the person's design vities relate only to:	Designer that provides design activities to the public Exemption 3.2.4.1.(3)	Other Designer Exemption
1	construction of a farm building that is: of low human occupancy 2 storeys or less in building height, and less than 600 m² in building area		
2	a sewage system to be constructed by:		
2(a)	a Registered Sewage System Installer		
2(b)	the owner		
3	construction of tents that do not contain bleachers, and are not enclosed with sidewalls, and do not exceed 225 m² in: ground area, or aggregate ground area and are closer than 3 m apart		
4	construction of signs		
5	Construction of all site services including:		
5(a)	surface drainage		
5(b)	plumbing located underground, either outside or under a building		
6	construction of pre-engineered elements of a building if the design of the element is carried out by a person competent in the specific discipline appropriate to the circumstances		
7	construction of appliances, equipment and similar incidental components of a building		
8	construction of a building for which a permit under Section 8 of the BCA is applied for or issued before January 1, 2006 provided that construction starts within six months after the permit is issued		

12.(b) Consider Clause 8.-(2)(c) and Subsection 15.11-(5) of the BCA and Div. C, Sentences 3.2.2.1.(1), 3.2.2.2.(1), 3.3.4.1.(3) and (4) and complete the following Tables by inserting the appropriate reference for the design activities that are exempt from **REGISTRATION** AS A DESIGNER ENGAGED IN THE BUSINESS OF PROVIDING DESIGN ACTIVITIES TO THE PUBLIC.

desig	signer is EXEMPT from the requirement to <u>register</u> as a gner engaged in the business of providing design activities to bublic <u>when</u> the person's design activities relate only to:	Designer that provides design activities to the public Registration Exemption 3.2.4.1.(3)
1	construction of a home as defined in the ONHWPA that will be constructed or sold by a builder or vendor that is registered under the ONHWPA and the designer is the builder or vendor or is an employee of the builder or vendor	
2	construction of a building that is owned by that person	
3	the extension, material alteration or repair of a detached house, semi- detached house, townhouse or row house containing not more than 2 dwelling units in each house	
4	construction of a factory-built house certified to CAN/CSA-A277, "Procedures for Certification of Factory-Built Houses"	
5	construction of a mobile home conforming to CAN/CSA-Z240 Series for mobile homes, structural and plumbing requirements, light duty windows, site preparation, foundation and anchorage	
6	construction of a park model trailer conforming to CAN/CSA-Z241 Series, "Park Model Trailers"	

busine are wit contai	gner is EXEMPT from th€ requirement to <u>register</u> as a designer engaged in the ess of providing design activities to the public <u>when</u> the person's design activities the respect to a detached house, semidetached house, townhouse or row house ning not more than two dwelling units in each house and the design activities only to:	Designer that provides design activities to the public Registration Exemption 3.2.4.1.(4)
1	a plumbing system	
2	a heating, ventilation and air-conditioning system	
3	ancillary buildings such as garages	

12.(c) Consider Clause 8.-(2)(c) and Subsection 15.11-(5) of the BCA and Div. C, Sentences 3.2.2.2.(1) and 3.2.5.1.(2) and complete the following Table by inserting the appropriate reference for the design activities that are exempted from the QUALIFICATIONS of Other Designers.

QUA	A Designer is EXEMPT from the requirement to have the QUALIFICATIONS of Other Designer when the design activities relate only to:	
1	design activities for which a Registered Designer engaged in the business of providing design activities to the public or a qualified Other Designer reviews and takes responsibility for the design activities	
2	construction of a building that is owned by that person when the building is	a:
2(a)	detached house, semi-detached house, townhouse or row house containing not more than 2 dwelling units in each house	
2(b)	an ancillary building that serves a building described in 2(a) above.	
3	construction of an ancillary building (not owned by that person) that:	
3(a)	serves a detached house, semi-detached house, townhouse or row house if such house contains not more than two dwelling units, and	
3(b)	the ancillary building does not exceed 50 m ² in building area	

- When the CBO decides to refuse to issue a Building or Demolition Permit applied for under Subsection 8.-(1) of the BCA, he/she will have to,
 - a) refund the permit application fee to the applicant
 - b) refund the design activities fee to the applicant
 - c) inform in writing the Director of the Building and Development Branch of the Ministry of Municipal Affairs and Housing of the main reasons for the refusal
 - d) inform in writing the applicant of all the reasons for the refusal

BCA	&	OBC	References:	

THE BUILDING PERMIT APPLICATION AND ISSUANCE PROCESS WITH THE ASSISTANCE OF A RCA

NOTA BENE:

under the BCA a Registered Code Agency is NOT empowered to perform any function in relation to the demolition of a building or part thereof.

[BCA 15.15 Functions of RCAs and 4.1-(2) and (4) Appointment of RCAs]

You will recall from Module Two that the BCA empowers a Principal Authority to enter into an agreement with and appoint a RCA to perform the functions described in Section 15.15, before or after or both before and after a Building Permit is issued under Section 8 of the BCA.

[BCA Subsection 4.1-(4)]

When a RCA under agreement is appointed to assist the CBO in his/her determination whether to issue or refuse the Building Permit, the responsibility to review designs, specifications, documents and other information to determine whether the proposed building or construction will comply with the building code, as required by Clause 8.-(2)(a) of the BCA, lies with the RCA. Compliance with the OBC is corroborated by the "Plans

Review Certificate" referenced in Clause 8.-(2)(d) of the BCA and Div. C, Sentences 3.7.4.3.(1), (2), (3) and (7).

Subsection 8.-(2.1) of the BCA informs us that:

Facilitator/Self-Study
Participant Note: For
prescribed information
associated with the "Plans
Review Certificate", see
Div. C, Sentences
3.7.4.3.(1), (2), (3) and (7).

if the application includes a Plans Review Certificate that contains the prescribed information, the CBO is **not** entitled to refuse to issue the permit on the grounds that the proposed construction of the building to which the Plans Review Certificate relates does not comply with the OBC.

TIME FOR FILING PLANS REVIEW CERTIFICATE WITH THE CBO

When the RCA is appointed by a Principal Authority under Section 4.1, the completed Plans Review Certificate is required before the CBO decides to issue the Building Permit. Without the Plans Review Certificate the CBO is incapacitated from issuing the Building Permit.

- THE PERMIT APPLICATION & ISSUANCE PROCESS - Page 32

EXERCISE # 4 - THE BUILDING PERMIT APPLICATION AND ISSUANCE PROCESS WITH A REGISTERED CODE AGENCY

To complete this exercise, you will need to consult Section 8 of the BCA and Div. C, Articles 3.7.4.2. and 3.7.4.3. You are reminded to select the best or most complete answer and support your choice with reference(s) when prompted.

- When a RCA has been duly appointed, compliance of the proposed construction or building with the requirements of the OBC, to satisfy part of Clause 8.-(2)(a) of the BCA is substantiated by the;
 - a) Plans Review Certificate as defined in Subsection 1.-(1) of the BCA and prescribed in Div. C, Sentence 3.7.4.3.(7)
 - b) completed Plans Review Certificate that contains the information prescribed in Div. C, Article 3.7.4.3.
 - Final Certificate as defined in Subsection 1.-(1) of the BCA and prescribed in Div. C, Sentence 3.7.4.3.(7)
 - d) completed Final Certificate that contains the information prescribed in Div. C, Article 3.7.4.3.

Not considering the Quali	ty Manage	ment Plan	under Div. C
Sentence 3.4.3.3.(3) provi	ide BCA ar	nd OBC ref	erences:

BCA Reference:	 	
OBC References		

2. According to the OBC, the RCA shall ensure that the plans review activities were carried out by a person who has, for the type of building set out in Column 3 of Table 3.5.2.2.. the qualifications set out in: a) Div. A. Clauses 3.4.3.2.(1)(b) and (c) b) Div. B. Clauses 3.4.3.2.(1)(b) and (c) c) Div. C, Clause 3.4.3.2.(1)(b) or (c) d) Div. C. Clauses 3.4.3.2.(1)(b) and (c) OBC Reference: ____ 3. According to the OBC, a Plans Review Certificate must be signed, on behalf of the appointed RCA, by a person who has the qualifications set out in Clause: a) Div. A. Clause 3.4.3.2.(1)(a) b) Div. B. Clause 3.4.3.2.(1)(a) c) Div. C. Clause 3.4.3.2.(1)(a) d) Div. C, Clause 3.1.2.1.(1)(a) OBC Reference: _____ 4. The Plans Review Certificate as defined in Subsection 1.-(1) of the BCA is prescribed in Div. C, Sentence 3.7.4.3.(7). Specify the circumstances when the operative clause of the Instrument enacted by the Principal Authority under the enabling authority of Clause 7.-(1)(f) of the BCA may modify the Plans Review Certificate to satisfy special needs of the Principal Authority.

BCA Reference:

STOP

PROCESS FOR THE REVIEW OF AN APPLICATION FOR A CONDITIONAL BUILDING PERMIT

Before obtaining a Building Permit, an applicant may be required to obtain approvals from other authorities having jurisdiction and comply with the requirements in Statutes, Regulations and Bylaws other than the BCA, the OBC and the Instrument enacted under Section 7 of the BCA. Alternatively the proponent may wish to start with the construction of the foundations before the plans for the entire building are available. Having to wait for the completion of the plans for the entire building would cause expensive delays or push the start of construction to the next construction season.

To help overcome unreasonable delays, **Subsection 8.-(3) of the BCA**, **in tandem with Div. C**, **Article 1.3.1.5**. empowers the CBO to issue a Conditional Building Permit for the completion of any stage of construction, such as the foundation stage, prior to obtaining all the required approvals from other authorities having jurisdiction or having all of the plans ready. As a first step, the CBO must give consideration to Subsection 8.-(4) of the BCA:

In considering whether a Conditional Building Permit should be granted, the CBO shall, amongst other matters, have regard to the potential difficulty in restoring the site to its original state and use if required approvals are not obtained.

Processing of the application for the issuance of a Conditional Building Permit can then proceed if the plans, specifications, documents and other information for the portion of the building related to the Conditional Building Permit are complete.

According to Subsection 8.-(3) of the BCA, the CBO is empowered to issue a Conditional Building Permit if:

- the proposed construction complies with the applicable law listed in Clause 8.-(3)(a) of the BCA and Div. C, Article 1.3.1.5.,
- the CBO is of the opinion that unreasonable delays in the construction would occur if the Conditional Building Permit is not granted,

Facilitator/Self-Study
Participant Note: Under
Clause 8.-(3)(a) of the
BCA. the proposed
construction must comply
with Zoning By-laws
enacted under Section 34 of
the Planning Act and
Interim Control By-laws
under Section 38.
Under Div. C:

-Clauses 1.3.1.5.(1)(a) to (i), the undertaking may require the approval of these other authorities having jurisdiction before

the CBO can issue the Conditional Permit;

-Sentence 1.3.1.5.(2) the CBO can issue the Conditional Permit during the appeal period to a decision from the Committee of Adjustment if the minor variance as granted would result in full compliance with the Zoning or Interim Control By-law and no person had objected to the application at the hearing.

-Sentence 1.3.1.5.(3) the CBO can issue a Conditional Permit without compliance with the Zoning or Interim Control By-law where construction is required to comply with an Order under Subsection 21.-(1) of the Fire Protection and Prevention Act, 1997 or an Order to Remedy an Unsafe Building under Subsection 15.9-(4) of the BCA.

-Sentence 1.3.1.5.(4) the Conditional Permit issued under 8.-(3) of the BCA must indicate its conditional nature.

- the applicant and such other person as determined by the CBO agree in writing with the Principal Authority to:
 - a) assume all risk in commencing the construction,
 - b) obtain all necessary approvals in the time set out in the agreement or, if none, as soon as practicable,
 - file plans and specifications of the complete building in the time set out in the agreement,
 - d) at the applicant's own expense, remove the building and restore the site in the manner specified in the agreement if approvals are not obtained or plans filed in the time set out in the agreement, and
 - e) comply with such other conditions as the CBO considers necessary, including the provision of security for complying with d) above.

EXERCISE #5 - THE APPLICATION FOR A CONDITIONAL BUILDING PERMIT

To complete this exercise, you will need to consult Subsections 8.(3) "Conditional Permit" and 25.-(1) "Appeal to Court" of the BCA,
Div. C, Article 1.3.1.5. and the material presented above.

- The authority to issue a Conditional Building Permit lies with the:
 - a) Principal Authority
 - b) Inspector who has the same powers and duties as the CBO in relation to plumbing
 - c) Registered Code Agency
 - d) Chief Building Official and the Inspector or Designated Inspector who has the same powers and duties as the CBO in relation to Sewage Systems

DOA	D-f		
BUA	References:		

- THE PERMIT APPLICATION & ISSUANCE PROCESS - Page 36

Under the BCA, the initial authority to enter into a conditional permit agreement with the applicant and such other persons as the CBO determines lies with the:

Facilitator / Self-Study
Participant Note: Under
Subsection 8.-(3.1) of the
BCA. the Principal
Authority may delegate its
authority to enter into a
conditional permit
agreement to the CBO.

- a) Principal Authority
- Inspector who has the same powers and duties as the CBO in relation to plumbing
- c) Registered Code Agency
- d) Chief Building Official

BCA Referer	nce:		

- 3. When the CBO decides not to issue a Conditional Building Permit, his/her decision;
 - a) may be appealed to the Building Code Commission
 - b) may be appealed to the Ontario Superior Court of Justice
 - c) may be appealed to the Divisional Court
 - d) is not appealable under the BCA

RCA	Reference:		
0011	recipionio.		

- When the CBO decides not to issue a Conditional Building Permit, he/she is:
 - a) required to provide the applicant with all of the reasons for the refusal of the Conditional Building Permit
 - b) not required to provide the applicant with all of the reasons for the refusal of the Conditional Building Permit because there is no appeal process, under the BCA, from this decision and an application for a Conditional Permit under Subsection 8.-(3) of the BCA is NOT an application for a permit under Subsection 8.-(1) of the BCA

OBC F	References	and	reason	for	your	choice:	
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- 5. When Field E of the Application for a Permit to Construct or Demolish indicates that the purpose of the application is for a conditional permit, in deciding whether to issue or refuse to issue the conditional permit, the CBO:
 - a) must comply with the time period set out in Article 1.3.1.3. and Table 1.3.1.3.
 - b) is NOT compelled to comply with the time period set out in Article 1.3.1.3. and Table 1.3.1.3.

OBC References	and	reason	for yo	ur	choice:	
				_		

STOP

THE APPLICATION FOR A CHANGE-OF-USE PERMIT

NOTA BENE:

Under the BCA a Registered Code Agency is not empowered to perform any function in relation to the change-of-use of a building or part thereof. [BCA 15.15 Functions of RCAs and 4.1-(1) and (4) Appointment of RCAs]

An owner may want to change the use of an existing building or a part of an existing building (e.g., change a residential occupancy to a mercantile occupancy). Sometimes the owner proposes to carry out the change-of-use without doing any construction.

According Subsection 10.-(1) of the BCA:

Even though no construction is proposed, no person shall change the use of a building or part of a building or permit the use to be changed if the change would result in an increase in hazard, as determined in accordance with the OBC, unless a permit has been issued by the CBO.

Participant Note: The determination of the increase in hazard is done in accordance with Div. C. Article 1.3.1.4.

Facilitator / Self-Study

Prior to 1993, when Section 10 of the BCA and Part 10 of the OBC became law, Building Officials had to rely on the unsafe provisions of Section 15 [now Section 15.9] of the BCA to get the owner to upgrade what was perceived as unsafe for the new use of the building.

NOTA BENE:

A consideration of Subsection 8.-(1.1) of the BCA, Div. C, Articles 1.3.1.2. and 1.3.1.3. of the OBC, the prescribed Application for a Permit to Construct or Demolish approved by the Minister and the prescribed period within which a permit must either be issued or refused have NO significance in the case of an application for a Change-of-Use Permit under Subsection 10.-(1) of the BCA.

In this Module we will not deal with the evaluation of a building under Part 10 of the OBC to determine if the increase in hazard created by the change of major occupancy reduces the performance level of the building.

We will deal with the principles that determine if the proposed change-of-use:

 creates an increase in hazard and requires an evaluation under Part 10 of the OBC and a Change-of-Use Permit under Section 10 of the BCA when no deficiencies requiring an upgrade by construction are identified,

OR

 does not constitute an increase in hazard for the purposes of Section 10 of the BCA and consequently does not require an evaluation under Part 10 of the OBC, and does NOT require a permit under Section 10 of the BCA. When this is the case, the Zoning By-law and other instruments would govern the proposed change-of-use and not the BCA and the OBC.

Facilitator / Self-Study Participant Note: When identified deficiencies can be corrected without construction as provided by Div. B. Sentence 10.3.2.2.(2), Section 10.4., Column 2 of Table 10.3.2.2.A. and Columns 3 and 4 of Table 10.3.2.2.B.. it is deemed that the performance level has not been reduced so a changeof-use permit under Section 10 of the BCA would be required because the change-of-use had resulted

in an increase in hazard.

The determination of an increase in hazard is made from Div. C, Clauses 1.3.1.4.(1)(a) to (f) and Table 1.3.1.4. In the affirmative, Div. A, Sentence 1.1.2.5.(1) triggers the need to evaluate the building under Div. B, Part 10 to determine if the change-of-use creates a reduction in the performance level of the building.

Part 10 is essentially a checklist to determine if the change-of-use reduces the performance level of the building. When the evaluation reveals that the performance level is reduced and can only be restored by construction, Div. A, Article 1.1.2.6. applies if the building has been in existence for at least five years, and Article 1.1.2.7. of Div. A, when the building has been in existence for less than five years. In other words, identified deficiencies that need construction to restore the performance level of the building become a Part 11 Renovation when the building is at least five years old or a change of use guided by Div. B, Section 3.17. or 9.41., as the case may be, when the building is less than five years old.

Where construction is proposed or required to upgrade identified deficiencies a Building Permit is required under Section 8 of the BCA. When that is the case, Div. C, Sentence 1.3.1.4.(2) informs us that a person is exempt from the requirement to obtain a Change-of-Use Permit under Section 10 of the BCA.

EXERCISE # 6 - WHEN IS A CHANGE-OF-USE PERMIT REQUIRED BY SECTION 10 OF THE BCA?

Consider Div. A, Article 1.1.2.5. and Div. C, Article 1.3.1.4. and Section 10 of the BCA as they deal with the requirements for a Change-of-Use Permit.

 Identify the circumstances when a CBO, relying on the authority of the BCA, must issue the Change-of-Use Permit.

A Chief Building Official is compelled by the BCA to issue a Change-of-Use Permit when,

- 1. _____
- 2. _____
- 3. _____

BCA References:

- In deciding whether to issue the Change-of-Use Permit under Section 10 of the BCA or to refuse to issue it, the CBO must determine if the building if used as proposed will contravene any other applicable law. The definition of "applicable law" referenced in Clause 10.-(2)(a) of the BCA is found in:
 - a) Division A, Sentence 1.4.1.2.(2)
 - b) Division B, Sentence 1.4.1.2.(2)
 - c) Division C, Sentence 1.4.1.2.(2)
 - d) Subsection 1.-(1) of the Building Code Act

Facilitator / Self-Study
Participant Note: Div. C.
Table 1.3.1.4, must be used
correctly "From" previous
major occupancy in Row 1
"To" new major occupancy
in a Column.

3. For purposes of Section 10 of the BCA, what constitutes an increase in hazard?

As determined by the OBC, the following changes in use of a building or part thereof constitute an increase in hazard:

- 1. _____
- 2. ______
- 3. _____
- 4.
- 5. _____
- 0,

OBC References:

- 4. When it has been determined that a proposed change-of-use would result in an increase in hazard, the building must be evaluated using the provisions of Division B:
 - a) Part 2
 - b) Part 3
 - c) Part 9
 - d) Part 10

OBC Reference:

5. In the next table, consider the proposed change of use in Column 2 and in Columns 3 and 4 insert the word "yes" or "no" to indicate if the "Proposed Change-of-Use" is an "increase in hazard" requiring an evaluation under Div. B, Part 10 and if a "Change-of-Use Permit" is required under Section 10 of the BCA. Provide Div. C, references in Column 5.

	Proposed Change-of-Use	Increase in hazard requiring an evaluation under Part 10 of the OBC?	Change- of-Use Permit* under Section 10 of the BCA?	OBC Div. C Reference(s)
1	Changing a house (C) to an office(D)			
2	Changing a warehouse (F-3) to a suite of offices (D)			
3	Changing a nursing home (B-2) into a residential care facility (B-3)			
4	Changing a greenhouse on a farm to a retail store (E) for landscaping products in territory without municipal organization.			
5	Changing a greenhouse on a farm in Ottawa to a retail store (E) for landscaping products			
6	Converting a vacant building to a dormitory for the homeless (C) where the previous use is uncertain			
7	Leasing part of an accounting office (D) to a travel agency (D)			
8	Converting a Public Works Garage to an Ambulance Garage			

^{*} no deficiencies identified so no construction required and none proposed

^{**} exempted by the provisions of Division B

6. Consider the situations in Rows 1 to 6 of Column 2.

Complete the Permit Issuance Chart on the next page by inserting "YES" or "NO" in each cell.

In Column 3 indicate if a Building Permit under Section 8 of the *Building Code Act* is required for the situation in Column 2.

In Column 4 indicated if a Change-of-Use Permit under Section 10 of the *Building Code Act* is required for the situation in Column 2.

In Column 5, indicate if the situation in Column 2 requires an evaluation under Division B, Part 10.

In Column 6, if you were dealing with a Part 3 building, indicate if the provisions of Div. B, Part 3 could apply to the situation in Column 2.

In Column 7, if you were dealing with a Part 3 building indicate if the provisions of Div. B, Section 3.17. could apply to the situation in Column 2.

In Column 8, if you were dealing with a Part 9 building, indicate if the provisions of Div. B, Part 9 could apply to the situation in Column 2.

In Column 9, if you were dealing with a Part 9 building indicate if the provisions of Div. B, Section 9.41. could apply to the situation in Column 2.

In Column 10, indicate if the provisions of Division B, Part 11 could apply to the situation in Column 2.

PERMIT ISSUANCE CHART

		TYPE OF PERMIT REQUIRED UNDER BCA		BUILDING CODE DESIGN & CONSTRUCTION REQUIREMENTS (SEE NOTE					NOTE (1)]
	SITUATION	Section 8 Building	Section 10						
		Permit	Change- of-Use Permit	Part 10 Evaluation Change- of-Use	Part 3 Construction Proposed or Required	Section 3.17. Construction Proposed if building < 5 years old	Part 9 Construction Proposed or Required	Section 9.41. Construction Proposed if building < 5 years old	Part 11 Renovation if building > 5 years old
1	Change of use proposed; increase in hazard [note(2)]; no construction proposed; no reduction in performance level; complies with Part 10.								
2	Change of use proposed; increase in hazard [note(2)]; identified reduction in performance level can be satisfied under Part 10 without construction.								
3	Change of use proposed; increase in hazard [note(2)]; no construction proposed, identified reduction in performance level require compensating construction.								
4	Change of use proposed; construction proposed								
5	No change in use proposed; construction proposed.								
6	No change in use proposed; no construction proposed.								
1	Column 2	Col 3	Col 4	Col 5	Col 6	Col 7	Col 8	Col 9	Col 10

NOTE:

- 1. The application of specific Code provisions from Division A, B and C would depend on occupancy type, size and age of the building.
- 2. <u>Increase in hazard</u> as determined from Div. C, Article 1.3.1.4. is used to determine IF AN EVALUATION IS REQUIRED when a change of use is proposed under Section 10 of the Building Code Act.

- 7. The Application for a Change-of-Use Permit under Section 10 of the Act is made on the form;
 - a) approved by the Minister of Municipal Affairs and Housing as provided in Div. C, Sentence 1.3.1.2.(2)
 - b) prescribed by the Principal Authority in the Instrument enacted under Clause 7.-(1)(f) of the BCA
 - c) prescribed in Subsection 8.-(1.1) of the BCA
 - d) prescribed by the CBO who is responsible, under the authority of Clause 1.1-(6)(a) of the BCA, to establish operational policies for the enforcement of the BCA and the OBC

BCA	references:		

- The issuance of a Change-of-Use Permit under Section 10 of the BCA;
 - a) is not subject to the rules of the BCA and OBC concerning the period within which the CBO must decide whether to issue or refuse the permit
 - b) is subject to the rules of the BCA and OBC concerning the period within which the CBO must decide whether to issue or refuse the permit

OBC Reference:	

- 9. The Designer who will review and take responsibility for the plans for a Change-of-Use Permit under Section 10 of the BCA where no construction is proposed, must have the qualifications set out in:
 - a) does not require qualifications
 - b) Div. C, Column 2 of Table 3.5.2.1.
 - c) Div. C, Column 3 of Table 3.5.2.1.
 - d) Div. C, Column 4 of Table 3.5.2.1.

OBC	Reference	and r	reason for	your	choice:	

- 10. The CBO, Supervisor, Manager or Inspector including a Fire Chief as an OBC Inspector under Subsection 1.3.4., who will review a building to determine compliance with Part 10 of the OBC where an Application for a Change-of-Use is not proposing any construction, must have the technical qualifications set out in:
 - a) Div. C, Column 2 of Table 3.5.2.1.
 - b) Div. C, Column 3 of Table 3.5.2.1.
 - c) Div. C, Column 2 of Table 3.5.2.1. for the type of building in Column 4
 - d) Div. C, Column 3 of Table 3.5.2.1. for the type of building in Column 4

OBC References: _			 	
	-			

- 11. The RCA who will undertake the review of a building to determine compliance with Div. B, Part 10 where an Application for a Change-of-Use is not proposing any construction, must have the technical qualifications set out in:
 - a) Div. C, Column 1 of Table 3.5.2.2.
 - b) Div. C, Column 2 of Table 3.5.2.2.
 - c) Column 1 of Table 3.5.2.2. for the type of building in Column 3
 - d) the RCA is not empowered to perform any functions in connection with a permit under Section 10 of the BCA

BCA References	s:		
DUA References	5		

STOP

EXERCISE # 7 - SUMMARY OF PERMIT ISSUANCE PROCESSES

Consider the following permit issuance flowcharts. In the space provided note any comment, question or concern. During the course, the facilitator will respond to your comments, questions and concerns.

1.	Building, Demolition and Conditional Permit under Section 8 of
	the BCA without the involvement of a RCA. [Page 49]
_	
_	
_	
_	
_	
_	
_	
_	
2.	Notes/Questions/Concerns concerning the issuance of a Building or Conditional Permit under Section 8 of the BCA with the involvement of a RCA. [Page 50]
_	
_	
_	
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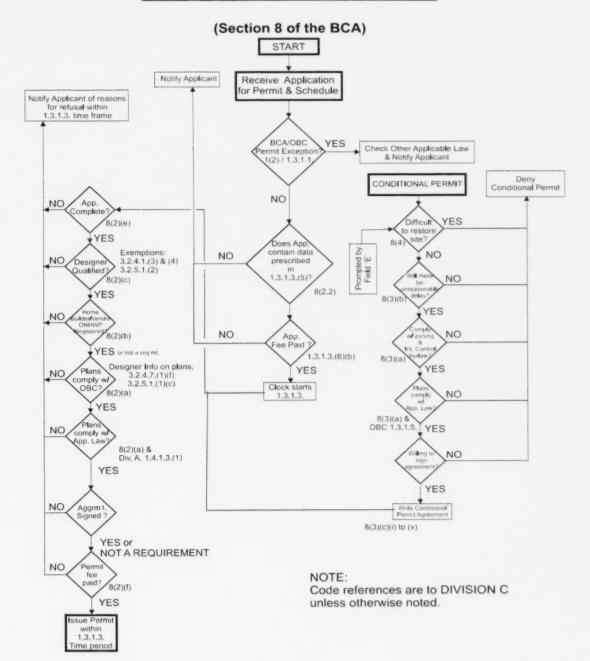
NOTA BENE FOR PARAGRAPHS 1. AND 2. (on the previous page) AND DECISION MAKING FLOW CHART ON PAGES 49 AND 50:

In the case of an application for a Conditional Permit, Sentences 1.3.1.2.(1) and (2) of Division C provide that the prescribed Application for a Permit to Construct or Demolish be used. However, as evidenced by Sentences 1.3.1.3.(1) to (3) and (5), there is no legislative requirement to notify the applicant of the reason(s) for the refusal of the Conditional Permit Application nor any time period to respect concerning the issuance or refusal to issue a Conditional Permit.

3.	Notes/Questions/Concerns concerning the issuance of a Change-of-Use Permit under Section 10 of the BCA, RCA's
	have no involvement. [Pages 51 and 52]
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_	
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STOP

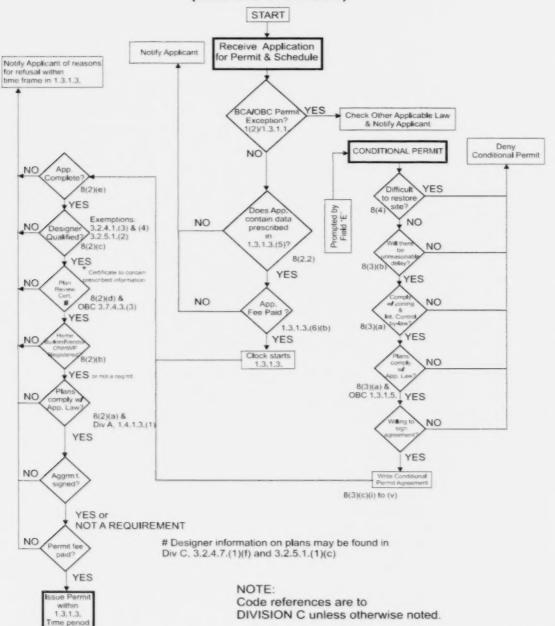
BUILDING/ DEMOLITION PERMIT ISSUANCE NO REGISTERED CODE AGENCY



Revised July 07

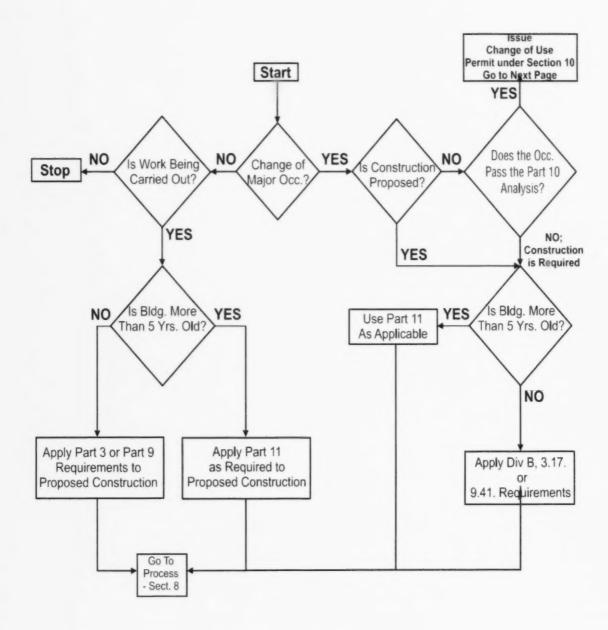
BUILDING PERMIT ISSUANCE WITH A REGISTERED CODE AGENCY

(Section 8 of the BCA)

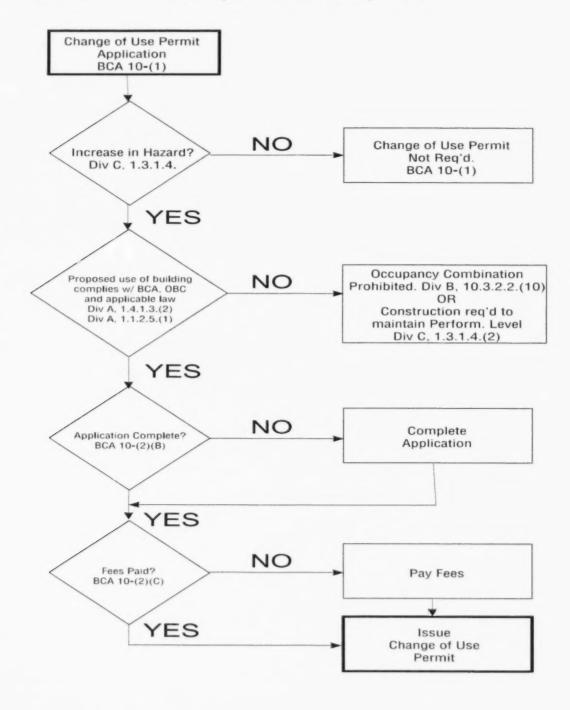


Revised July 07

Part 10/11 Flow Chart Change of Use



Change of Use Permit Issuance No Construction Proposed or Required



DUTY TO COMPLY WITH THE BCA AND THE OBC

According to Subsection 8.-(11) of the BCA,

No person shall construct or demolish a building or cause a building to be constructed or demolished except in accordance with the BCA and the OBC.

During the plans examination process, Clause 8.-(2)(a) of the BCA implies that the use of an innovative material, system or building design that is not recognized by the OBC must be authorized before the permit is issued.

AUTHORIZING INNOVATIVE MATERIALS, SYSTEMS AND BUILDING DESIGNS

An innovative material, system or building design that is not authorized by the provisions of Division B may be incorporated in the construction of a building by:

- 1. using an alternative solution, or
- 2. an Authorization of the Building Materials Evaluation Commission (BMEC), or
- a Ruling made by the Minister of Municipal Affairs and Housing,

if

THE INNOVATIVE MATERIAL, SYSTEM OR BUILDING DESIGN WILL, IN THE OPINION OF THE AUTHORITY HAVING JURISDICTION, ACHIEVE THE LEVEL OF PERFORMANCE REQUIRED BY THE PROVISIONS OF DIVISION B OF ONTARIO'S 2006 OBJECTIVE-BASED CODE.

ALTERNATIVE SOLUTIONS FOR USING INNOVATIVE MATERIALS, SYSTEMS AND BUILDING DESIGNS

A sample process for the submission and assessment of alternative solutions for innovative materials, systems and building designs will be dealt with at Module Twelve, "Complying with Division B".

STOP

AUTHORIZATIONS OF THE BMEC

Clause 28.-(4)(b) of the BCA informs us that upon application:

the BMEC is empowered to authorize the use of any innovative material, system or building design in respect of the construction of buildings and their authorization to use the innovative material, system or building design may be subject to conditions.

Subsection 28.-(5) of the Act goes on to informs us that:

the use of any innovative material, system or building design in the manner approved by the BMEC <u>is not</u> a contravention of the OBC.

The BMEC is <u>NOT</u> a testing or certification agency for new materials, systems or building designs. It draws upon test results and data from others to evaluate the appropriateness of a material, system or building design, not recognized by the provisions of Division B. A BMEC authorization is not site-specific to a single building, it applies to any building located in Ontario, subject to the stated conditions and may be issued for a specific time period with a definite date of termination.

Subsection 29.-(8) of the BCA goes on to inform us that:

if a materials evaluation body designated in the building code [see Div. C, Sentence 2.4.1.1.(1)] has examined or expressed its intention to examine an innovative material, system or building design, the BMEC is not empowered to make an authorization under Subsection 28.-(4) in respect of that material, system or building design.

Copies of BMEC Authorizations are posted on the Building Code Website at the following Universal Resource Locator address, http://www.ontario.ca/buildingcode under the heading "Appeals and Approvals".

NOTA BENE

To avoid delays, it is a good practice for Designers to remind applicants to include any BMEC Authorization with the Application for a Permit to Construct or Demolish. After the permit is issued, Div. C, Clause 1.3.2.2.(1)(b) informs us that the person in charge of the construction of the building is required to keep on site any BMEC Authorization or a facsimile thereof.

EXERCISE #8 - AUTHORIZATIONS OF THE BMEC FOR THE USE OF INNOVATIVE MATERIALS, SYSTEMS AND BUILDING DESIGNS

Consult Section 28 of the BCA, Div. C, Article 1.3.2.2. and BMEC Authorization # 02-08-279. Deal with the questions in the usual way.

1.b)	BCA Reference:
	Consult Subsections 6.A. "Specific Terms and Conditions" and 6.B. "General Conditions" of BMEC Authorization # 02-08-279 and in the space provided, note any comment, question or concern. During the course, the facilitator will respond to any comment, question or concern you may have.

2.	Does the use of an innovative material, system or building design, as authorized by the BMEC contravene the OBC in any way?				
	BCA Reference:				
3.	Under the OBC, the responsibility to maintain on the site of the construction one copy of any applicable BMEC authorization or facsimile thereof lies with the:				
	a) applicant for the permit to construct the building				
	b) holder of the permit to construct the building				
	 c) designer who reviewed and took responsibility for the design for the construction of the building 				
	d) person in charge of the construction of the building				
	OBC Reference:				

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Participant Note: The
HPBIM High Performance
Bedding Aggregate can
also be used as free
draining granular material
identified in Div. B. Clause
9.14.2.1.(2)(a)(ii) and
under a floor-on-ground as
required by Sentence
9.16.2.1.(1), see paragraph
6. of the Authorization.

- 4. A review of BMEC Authorization # 02-08-279 reveals that HPB™ High Performance Bedding Aggregate is authorized for use in Div. B for:
 - a) site mixed concrete under Article 9.3.1.7.
 - b) the installation of drain tiles under Sentence 9.14.3.3.(4)
 - c) the installation of distribution pipes under Clause 8.7.3.3.(1)(c) and Sentence 8.7.3.3.(5)
 - d) the installation of underground piping under Article 7.3.4.6.

BMEC Authorization :	#	02-08-279	Reference:	
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STOP

RULINGS BY THE MINISTER

Subsection 29.-(1) of the BCA empowers the Minister of Municipal Affairs and Housing, to make Rulings:

a) approving the use of innovative materials, systems or building designs evaluated by a materials evaluation body designated in the OBC(1),

or

b) adopting an amendment to a code, formula, standard, guideline, protocol or procedure that has been adopted by reference in the building code,

or

c) approving the use of alternative materials, systems and building designs which, in the opinion of the Minister, will achieve the level of performance required by the OBC.

and

each Ruling is subject to such conditions as the Minister in his or her discretion considers appropriate.

(1) Div. C, Sentence 2.4.1.1.(1) of the OBC informs us that the Canadian Construction Materials Centre (CCMC) has been designated as the materials evaluation body in relation to Clause 29.-(1)(a) of the BCA.

BINDING INTERPRETATIONS BY THE MINISTER

Subsection 28.1-(1) of the BCA empowers the Minister of Municipal Affairs and Housing to:

Participant Note: Section 28.1 of the BCA took effect on July 1, 2005. Before that date, the Building Code Commission (BCC) was mandated and empowered by Clause 24.-(1)(a), of the BCA, as it read, to provide interpretations of the technical requirements of

Facilitator/Self-Study

the OBC.

issue a written interpretation of any provision of the OBC. and the Minister's interpretation is binding on any person exercising a power or performing a duty under the BCA and on any person who is subject to the BCA.

EXERCISE # 9 - RULINGS AND BINDING INTERPRETATIONS BY THE MINISTER OF MUNICIPAL AFFAIRS AND HOUSING

Consult Sections 28.1 and 29 of the BCA and 2.4. of Div. C, Minister Ruling № 01-03-87 (12981-R) and CCMC Evaluation Reports № 12981-R and № 12884-R. Also consult Division A, Article 1.2.1.1. Standard procedures apply in dealing with the questions that follow.

1.	Consider Ruling of the Minister of Municipal Affairs and Housing № 01-03-87 (12981-R) and in the space provided, note any question, comment or concern about the use of the product as an air-barrier. During the course, the facilitator will respond to any comment, question or concern you may have.
2.	Consult CCMC Evaluation Report 12981-R and in the space provided note any comment, concern or question. Take note of second paragraph of Section 2 and in the space provided, note any question, comment or concern. During the course, the facilitator will respond to any comment, question or concern you may have.
3.	In the event of a conflict between a BMEC Authorization and a Ruling by the Minister; which one takes precedence?
	BCA Reference:

4. Do you think that the BMEC and the CCMC are competing agencies? Why or why not?
BCA Reference:

5. Consider CCMC Evaluation Report № 12884-R. The product is not associated with a Ruling by the Minister of Municipal Affairs and Housing pursuant to Section 29 of the Building Code Act nor an Authorization by the Building Materials Evaluation Commission under the authority of Clause 28.-(4)(b). In you own words, specify the circumstance that would allow the use of this product as an air-barrier material.

Facilitator / Self-Study Participant Note:

Air-Barrier Systems are regulated by Division B. Subsection 9.25.3.

The mere fact that a material is associated with a CCMC Evaluation Report or has been tested to a Standard that is not referenced in Division B. Table 1.3.1.2. or evaluated by a material evaluation body other than CCMC does not mean that such material is "automatically" acceptable for use in Ontario. All material must achieve the level of performance required by Division B, as provided by Article 1.2.1.1. of Division

6. Identify the seven options available to the proponent where the person having jurisdiction has refused to allow the use of a proposed alternative solution on the basis that the proposed material, system or building design will not in his /her opinion, provide the level of performance that is required by the applicable acceptable solutions of Division B.

The applicant whose application to use an alternative solution for a material, system or building design was denied by the person having jurisdiction may:

- 1. _____
- 2. _____
- 3. _____
- 4. _____
- 5. _____
- 6. _____
- 7.

STOP

The form to propose a change to the OBC is found at the front of each copy of the OBC and on the Building Code website, http://www.ontario.ca/buildingcode under the heading "Publications".

EXERCISE # 10 - REVIEW OF MODULE FIVE

In the space provided, note any comment, concern or question and during the class review bring the matter to the attention of the facilitator.

PERMITS TO CONSTRUCT OR DEMOLISH Required under Subsection 8(1) of the BCA
- meaning of "Construction" under BCA Subsection 1(1)
- meaning of "Demolition" under BCA Subsection 1(1)
- meaning of "Building" under BCA Subsection 1(1)
- meaning of "Plumbing" under BCA Subsection 1(1) and Claus 1.4.1.2.(1)(b) of Division A
- meaning of "sewage system" under Clause 1.4.1.2.(1)(b) of Division A
Division A

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- meaning of "designated structure" listed under Clauses 1.3.1.1.(1)(a) to (I) of Division A
Building Code Act exemption from the requirement for a permit - Subsection 1(2)
Building Code exemption form the requirement for a permit - Division C, Clauses 1.3.1.1.(1)(a) to (c) and 1.3.1.1.(5)(a) to (c)
Is the proposed building, construction or demolition under municipal jurisdiction? Considering matters under Federal jurisdiction and according to Section 11 of the <i>Interpretation Act</i> , the BCA does not bind the Crown; and, Crown Agencies by virtue of the <i>Crown Agency Act</i> .
Who can apply for a permit to construct or demolish? Division C Sentences 1.3.1.2.(1) and (2)
What constitute a complete application for a permit to construct or demolish? Division C Sentence 1.3.1.3.(5), (8) and (9)
What is the prescribed period to issue or refuse an application for a permit to construct or demolish? Division C Article 1.3.1.3.

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	When does the prescribed period to issue or refuse a permit to construct or demolish begins? Division C Sentences 1.3.1.3.(6) to (9)
	The prescribed Application for a Permit to Construct or Demolish BCA Subsection 8(1.1) and Div. C, Sentence 1.3.1.2.(2)
	Field entitled For use by Principal Authority
	Field entitled Application submitted to:
	FIELD A. Project information
	FIELD B. Applicant BCA Subsection 8(1.1) and Div. C, Clauses 1.3.1.2.(1)(a) and (b) and Sentence 1.3.1.2.(3) - Credentials of Permit Applicant, Roll Book, lease, title etc

FIELD C.	Owner (if different from applicant)	
FIELD D.	Builder (optional)	
FIELD E.	Purpose of application	
FIELD F.	Tarion Warranty Corporation (Ontario New Home Warranty Program)	

FIELD G. Attachments

- i. <u>Applicable law</u>: The CBO is responsible to verify the application against the applicable laws listed in Division A, Article 1.4.1.3. When required approvals from other authorities having jurisdiction are not attached to confirm compliance with some "applicable law", such would form part of the reasons for the refusal of the permit.
- Schedule 1 will be reviewed following the review of the Application for a Permit to Construct or Demolish.
- iii. Schedule 2 will be reviewed following the review of the Application for a Permit to Construct or Demolish.
- iv. The types and quantities of plans and specifications that must accompany the prescribed Application are as specified in the instrument of the Principal Authority enacted under the authority of Clause 7.-(1)(b) of the Building Code Act.

iv.	continued Not including Architects and professional Engineers, for a summary of the Designer information that must be included on any document relating to design activities, consult Div. C, Subclauses 3.2.4.7.(1)(f)(i) to (iv) for Designers engaged in the business of providing design activities to the public and Subclauses 3.2.5.1.(1)(c)(i) to (iii) for Other Designers.
FIELD H.	Declaration of applicant
	e 1: Designer Information pleted Schedule 1 is required for each Designer who is
not an Ai takes res	prohitect or Professional Engineer and who reviews and ponsibility for design work in respect of the project. 8(2)(c) and Div. C, Section 3.2. and Table 3.5.2.1.
	Project information sch Field A. of the application

FIELD B.	Individual who is not an Architect or Professional Engineer and who reviews and takes responsibility for design activities
Div. C, S	ubsection 3.2.6. Public Register QuARTS
	Design activities undertaken by individual identified in Section B. [Division C, Table 3.5.2.1.] ubsection 3.2.6. Public Register — QuARTS
	Declaration of Decision who is not on Architect or
FIELD D.	Declaration of Designer, who is not an Architect or Professional Engineer There are three options in this field. Option 1, when the design work was carried out by a firm engaged in the business of providing design activities to the public.
	Option 2, when the design work was carried out by an
	Other Designer. Take note that the basis for exemption from registration must be shown.

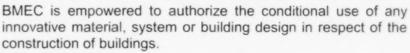
FIELD B. Sewage system installer

FIELD C.	(Where	red installer information answer to B is "Yes") Subsection 3.3.4. Public Re	gister QuAF	RTS
FIELD D.	(where a	d supervisor information answer to B is "Yes") Subsection 3.3.4. Public Re		RTS
	As evide submitte Sewage	tion of Applicant: nced by the text of Field E, d a second time, prior to System when the installer of initial submission of an a Schedule 2 has nothing to of the sewage system. D are exempted from F Division C, Clauses 3.2.4 qualifications under Divis 3.2.5.1.(2)(d)(i) and (ii) at FIELD F "Declaration Schedule 1: Designer Inf	construction of was not know application. To do with the design activities Registration Late (3)(b) and (sion C, Subclate to be identificated of Designer	esign s that under (e) or uses ied in
		r a Conditional Building Pe 8(3) to (8) and Div. C, Art		

Module Five	- THE PERMIT APPLICATION & ISSUANCE PROCESS -Page 69
	Building/Demolition Permit Issuance Process- No RCA BCA Subsection 8(2), Decision Making Flow Chart page 49
	Building Permit Issuance Process - With RCA BCA Subsection 8(2), Decision Making Flow Chart page 50
	Effect of Plans Review Certificate of RCA BCA 8(2.1) and Div. C, Sentences 3.7.4.3.(1), (2), (3) and (7)
	Design Activities That Are Exempt from the Requirement to register as a Designer engaged in the business of providing design activities to the public Div. C, Sentences 3.2.4.1.(3) and (4)
	Design Activities That Are Exempt from the Requirement to have the Qualifications of Other Designer Div. C, Sentence 3.2.5.1.(2)
	The Application for a Change-of-Use Permit BCA Section 10 and Clause 7(1)(f) on application prescribed in the instrument, being a By-law, Resolution or Regulation.

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Change-of-Use Permit Application and determination of in in hazard requiring an evaluation under Div. B, Part 10 Div C, Sentence 1.3.1.4.(1) and Table 1.3.1.4.	crease
OBC exceptions from requirement to obtain a Change-Permit under Part 10 of the BCA Div. C, Sentences 1.3.1.4.(2) and (3)	of-Use
Change-of-Use Permit Issuance Process BCA Section 10, Decision Making Flow Charts pages 51 a	and 52
Duty to Comply with BCA and OBC BCA 8(11)	
A sample process for the submission and assessmalternative solutions for innovative materials, systems and be designs will be dealt with at Module Twelve, "Complyin Division B".	uilding



BCA Section 28

The Minister of Municipal Affairs and Housing is empowered to make Rulings:

- a) approving the use of **innovative** materials, systems or building designs evaluated by a materials evaluation body designated in Div. C, Sentence 2.4.1.1.(1) or
- adopting an amendment to a code, formula, standard, guideline, protocol or procedure that has been adopted by reference in the building code, or
- c) approving the use of alternative materials, systems and building designs which, in the opinion of the Minister, will achieve the level of performance required by the OBC, and each Ruling is subject to such conditions as the Minister in his or her discretion considers appropriate.

BCA Section 29

Since June 30, 2005 the Minister of Municipal Affairs and Housing is empowered to issue a written interpretation of any provision of the OBC, and the Minister's interpretation is binding on any person exercising a power or performing a duty under the BCA and on any person who is subject to the BCA BCA Section 28.1

NOTA BENE:

Before June 30, 2005 the Building Code Commission was empowered to make interpretations of the technical requirements of the building code

STOP

MODULE SIX - EXERCISING LAWFUL ENTRY

INTRODUCTION

In this Module, we will look at the legal authority and procedures to follow to gain access to land or buildings in the exercise of a power or the performance a duty under the authority of the *Building Code Act*. Building Officials require entry upon land and into buildings to:

- ✓ conduct inspections,
- ✓ do remedial work, or
- ✓ conduct searches.

On the other hand, RCA's and Persons authorized by a Registered Code Agency only require entry upon land and into buildings to conduct inspections.

OBJECTIVES

In this Module, you will:

- ★ Analyse the entry processes to inspect or to do remedial work under the authority of the BCA,
- ★ Differentiate between the process of entry to a room or place actually used as a dwelling and other places,
- Identify procedures to follow before entering upon land and into buildings and how to avoid trespass under the Trespass to Property Act, and
- * Acquire the knowledge to obtain a warrant to enter and search and to enter, search and seize evidence.

RIGHT OF ENTRY UNDER THE BCA AND OFFENCES UNDER THE TRESPASS TO PROPERTY ACT

Subsection 2 of the *Trespass to Property Act*, R.S.O. 1990, CHAPTER T. 21 informs us that trespass is an offence.

Every person who is not acting:

or

- 1. under a right or authority conferred by law and
- 2. without the express permission of the occupier, the proof of which rests on the defendant: enters on premises when entry is prohibited under this Act,
- or engages in an activity on premises when the activity is prohibited under this Act;

does <u>NOT</u> leave the premises immediately after he or she is directed to do so by the occupier of the premises or a person authorized by the occupier,

is guilty of an offence and on conviction is liable to a fine.

On the other hand, Subsection 3.-(2) of the *Trespass to Property Act*, informs us that persons have an implied permission to use the approach to the main entrance:

There is a presumption that access for lawful purposes to the door of a building on premises by means apparently provided and used for the purpose of access is not prohibited.

AUTHORITY TO ENTER AND INSPECT UNDER THE BCA

Building Officials, RCA's and Persons authorized by a RCA need to enter upon land and into buildings to carry out inspections. For their work to be lawful, they must have a legal right to be on the property. The authority to enter upon land and into buildings under the BCA operates in conjunction with the Canadian Charter of Rights and Freedoms under the *Constitution Act*, 1982, other Statute Laws such as the *Trespass to Property Act* and Common Law.

According to the second edition of Carswell's Pocket Dictionary of Canadian Law, a Statute is a law or Act which expresses the will of a legislature or parliament. Common law, in contrast to statute law, is law which relies for its authority on the decisions of the courts and is recorded in the law reports as decisions of judges along with reasons for their decision.

Under the authority of Subsection 12.-(1) and paragraph 1. of Subsection 15.17-(3) of the BCA, Building Officials, RCA's and Persons authorized by a RCA, having jurisdiction are empowered to:

enter upon land and into buildings at any reasonable time without a warrant for the purpose of inspecting the building or site in respect of which a permit is issued or an application for a permit is made.

Note that this provision is only associated to the situation where a permit has been issued or applied for. Consequently, to enhance your right of entry to inspect, when a person starts to build without a permit, Building Officials (RCA's and Persons authorized by a RCA have no role in the enforcement of the Act) should try to have the person building without a permit to submit an application for a permit. The right of entry of Building Officials is then enhanced even if the application is incomplete.

In the case of an existing building, Subsection 15.9-(1) of the BCA empowers an Inspector (neither a Person authorized by a RCA nor a RCA) to:

enter upon land and into buildings at any reasonable time without a warrant for the purpose of inspecting a building to determine whether:

the building is unsafe, or

an Order to Remedy an Unsafe Building has been complied with.

ENTRY TO INSPECT DWELLINGS

For entry in a room or place actually being used as a dwelling, the special rules of Section 16 of the BCA inform us that despite Sections 8, 12 and 15.9, an Inspector, RCA or Person authorized by a RCA, by way of paragraph 3. of Subsection 15.17-(3) of the BCA is not empowered to enter or remain in any room or place actually being used as a dwelling unless:

a) the consent of the occupier is obtained, the occupier first having been informed that the right of entry may be refused and entry made only under the authority of a warrant issued under the BCA.

or

a.1) a warrant issued under the BCA is issued,

or

b) the delay necessary to obtain a warrant or the consent of the occupier would result in an immediate danger to the health or safety of any person.

In addition, the special rules of Section 16 of the BCA inform us that despite Sections 8, 12 and 15.9, an Inspector is not empowered to enter or remain in any room or place actually being used as a dwelling unless:

 entry is necessary to terminate a danger identified in an Emergency Order made by a CBO under the authority of Subsection 15.10-(3),

or

- d) the occupier of the said room or place actually being used as a dwelling has been served with a notice advising the occupier of the intention to enter, in accordance with Subsection 16.-(2) and Section 27, and the entry is necessary to:
 - remove a building or restore a site under Subsection
 8.-(6) when a conditional permit agreement failed,

or

remove an unsafe condition under the authority of Clause 15.9-(6)(b) by renovating, repairing or demolishing the building to remove the unsafe condition or by taking such other action as the CBO considers necessary for the protection of the public. Along the same line, Subsection 19.-(2) of the Act goes on to say:

A refusal of consent, by the occupier, to enter or remain in a place actually used as a dwelling is not hindering or obstructing within the meaning of Subsection 19.-(1) unless:

the Inspector, RCA or Person authorized by a RCA is acting under a warrant issued under Subsection 21.-(1) of the BCA.

or
the delay necessary to obtain a warrant or the consent of
the occupier would result in an immediate danger to the
health or safety of any person, [BCA 16.-(1)(b)]

or
entry is necessary to terminate a danger identified in an
Emergency Order, [BCA 16.-(1)(c)]

or
entry is required to enforce a conditional permit agreement,
[16.-(1)(d) and 16.-(2)]

or
entry is required to remedy an unsafe building when the
Order to Remedy Unsafe Building has not been complied
with. [16.-(1)(d) and 16.-(2)]

The principle that makes it more onerous to enter a room or place actually being used as a dwelling is derived from a common law principle that a person's home is his/her castle:

"The poorest man may in his cottage bid defiance to all the force of the Crown. It [his home] may be frail, its roof may shake, the wind may blow through it, the storm may enter, the rain may enter, but the King of England himself cannot enter. All the King's forces dare not enter nor cross the threshold of the ruined tenement." Lord Pitt Colchester England 1575

Section 8 of the Canadian Charter of Rights and Freedoms says that everyone has the right to be secure against unreasonable search and seizure. Consequently, Building Officials, RCA's and Persons authorized by a RCA should be cognizant of the fact that the way they exercise their right of entry may be scrutinized by the Courts.

PROCEDURE for ENTRY to a ROOM or PLACE THAT is $\underline{\mathsf{NOT}}$ a DWELLING by the UNINVITED OFFICIAL

Before a Building Official, RCA or Person authorized by a RCA can enter upon land or into a building where he/she has not been invited, he/she should:

- 1. identify him/herself,
- inform the occupant of his/her legal right of entry under the Building Code Act, and
- 3. state the reason why entry is required.

If entry is hindered or obstructed, he/she should consider commencing a proceeding for an offence under Section 19 (Obstruction of Inspector, etc...) or obtaining a Warrant for Entry and Search under Section 21 of the BCA.

PROCEDURE for ENTRY to a ROOM or PLACE THAT IS USED AS A DWELLING by the UNINVITED OFFICIAL

In the case where the Building Official, RCA or a Person authorized by a RCA is seeking entry to a room or place actually being used as a **dwelling**, he/she must;

- 1. identify him/herself,
- inform the occupant that he/she has a right to refuse entry and terminate the consent, if granted, at anytime during the inspection,
- 3. state the reason why entry is required, and
- 4. seek the permission to enter.

If the informed and voluntary consent of the occupier to enter is denied, he/she should consider applying for a warrant under Section 21 of the BCA (Warrant for Entry and Search) or evaluate the other options under Section 16 (Entry into Dwellings) of the BCA.

Facilitator Self-Study Participant Note: When uninvited and exercising your right of entry, it is always a good idea to bring someone with you who can later confirm the facts.

It is worth bearing in mind that in Court, the burden of establishing that the consent was given will be on the BCA Practitioner. In R. V. Nielsen (1988) 43 CCC (3d) 548 at 564 (Sask. C.A.) it was made clear that to meet this onus, the official needs to do more than simply establish that the person did not object to the inspection.

AVOIDING UNLAWFUL ENTRY

At law, the rights of Building Officials, RCA's and Persons authorized by a RCA to enter into buildings or upon land without the consent of the occupier are very limited. The consent may be given either directly by the occupier or implied by virtue of a building being open to the public (e.g., a shopping mall during business hours).

Although always desirable, direct consent is sometimes essential before inspections can be performed or remedial work carried out. To be legally effective, a consent must be both informed and voluntary.

- Informed means that the occupier is aware of the identity and legal authority of the Building Official, RCA or the Person authorized by a RCA, the reason why entry is required and the occupier's right to deny entry, in the case of a room or place actually being used as a dwelling.
- ✓ Voluntary means that the consent to enter is not given under coercion or compulsion; that is, anything which makes one person agree to another's demand because the other person's statements or conduct are so overbearing that the first person has no choice but to agree with the demands of the second.

According to Subsection 19.-(2) of the BCA, the consent of an occupier of a room or place used as a dwelling may be withdrawn at any time by the person who gave it; and this before the Building Official or the Person authorized by a RCA has completed the inspection.

Failure to comply with the right of entry provisions of the BCA (Statute Law) and common law (Decisions of the Courts) can result in the evidence that was collected being thrown out of court and may subject a Building Official, RCA or Person authorized by a RCA to prosecution under the *Trespass to Property Act*.

ENTRY TO INSPECT

Entry upon land and into buildings may be required to conduct an inspection to determine if:

1. an offence, under the BCA, has been committed,

or

construction, demolition or change-of-use of a building is in compliance with the BCA and the OBC,

or

a building is unsafe or an Order to Remedy an Unsafe Building has been complied with.

EXERCISE # 1 - ENTRY TO INSPECT UNDER THE BCA

Consult the BCA and identify the right of entry to inspect in each situation.

- Consider a Building Official, RCA or a Person authorized by a RCA and his/her right of entry to inspect construction to determine compliance with the BCA and the OBC, in;
- a) a premise, other than a room or place actually being used as a dwelling, where a permit has been applied for or issued.

BCA References:

b) a public premise, not a room or place actually used as a dwelling nor an area designated for authorized personnel only, where a permit has not been applied for nor issued and Building Official has reason to believe activity requiring a permit under the BCA is going on.

2. _____

Facilitator/Self-Study
Participant Note: The
Trespass to Property Act
can get you to the front
door or inside a public
building where access is
not restricted, e.g. not
restricted to authorized
personnel only

Facilitator/Self-Study
Participant Note: To enter
a room or place actually
used as a dwelling, the
consent of the occupier is
needed or the conditions of
16.-(1)(a.1), (b), (c), or (d)
is needed.

 A room or place actually used as a dwelling, where a permit has been applied for or issued and an inspection has not been requested.

BCA References for the Building Official:

BCA References for the Person authorized by an RCA:

- 2. Inspection by a Building Official to determine whether the building is unsafe.
- a) a building other than a room or place actually used as a dwelling.

BCA Reference:

to believe that the building may be unsafe before initial inspection?

In the case of unsafe buildings, RCA's and Process outbooked by a

Facilitator/Self-Study Participant Note: Fishing expeditions are not allowed, what is the reason

In the case of unsafe buildings, RCA's and Persons authorized by a RCA have no role to play except as provided under Division C, Sentence 3.7.6.3.(5)

 a building or room or place actually used as a dwelling; there are three possibilities.

BCA References:

STOP

ENTRY TO DO REMEDIAL WORK

RCA's and Persons authorized by a RCA have no role to play and there are three situations when Building Officials may need to enter upon land or into a building to do remedial work:

- Conditional permit—to remove a building and restore the site when the Conditional Permit Holder failed to comply with the agreement.
- Unsafe building—to remove an unsafe condition when the person failed to comply with an Order to Remedy an Unsafe Building.
- Emergency situation—to end an immediate danger to the health or safety of any person after the CBO has made and posted the Emergency Order.

In these three circumstances, the right of entry is granted to the Chief Building Official, Building Inspectors and their agents, such as contractors and other municipal employees.

EXERCISE # 2 - ENTRY TO DO REMEDIAL WORK UNDER THE BCA

Refer to the BCA, consider the circumstances and identify the provisions that authorize entry for the CBO, Building Inspectors and their agents, to do remedial work.

- Entry to remove a building and restore the site upon default of a conditional permit agreement under Clause 8.-(3)(c), involving:
 - a) a building other than a room or place actually used as a dwelling.

BCA Reference:

	b) a building or room or place actually used as a dwelling;(i) with the consent of the occupier.
	BCA References:
	(ii) without the consent of the occupier nor a warrant.
	BCA References:
2	When the Order to Remedy an Unsafe Building has not been
	complied with, entry to renovate, repair or demolish the building or part thereof to remove the unsafe condition or take whatever action is required to protect the public at:
a)	a building other than a room or place actually used as a dwelling.
	BCA Reference:
b)	a building or room or place actually used as a dwelling; (i) with the consent of the occupier.
	BCA Reference:

-	BCA References:
en	ter an Emergency Order is made by the CBO and posted try to take measures to terminate an immediate danger to e health or safety of any person, at:
a)	a building other than a room or place actually used as a dwelling.
-	
•	BCA Reference:
b)	a building, room or place actually used as a dwelling.

STOP

Facilitator Self-Study
Participant Note: For
Building Code Act
Practitioners, for a warrant
under Sections 21 of the
BCA, the form under
Section 1.4. of Div. C is to
be used instead of the
provisions for a warrant
under the Provincial
Offences Act

ENTRY WITH A WARRANT

Under the authority of Section 21 of the BCA a Provincial Judge or Justice of the Peace may issue a warrant authorizing the person named in the warrant, Form1.4.1.B. of Division C, to enter and search a building, receptacle or place.

The warrant is available **if** the Provincial Judge or Justice of the Peace is satisfied by information under oath, Form 1.4.1.A. of Division C, that there is reasonable ground to believe that:

- 1. <u>an offence under the BCA</u> (not the OBC, our emphasis) has been committed; and
- entry into and search of the building, receptacle or place will afford evidence relevant to the commission of the offence.

The applicant for a warrant to enter and search must satisfy the Provincial Judge or Justice of the Peace that there is reasonable grounds to believe that an offence has been committed (e.g., building without a permit contrary to Subsection 8.-(1) of the Act).

The applicant for the warrant must have some basis for his or her belief. The standard for reasonable ground to believe has been characterized by the Supreme Court of Canada as being crediblybased probability, rather than mere suspicion.

When considering applying for a warrant to enter and search under the BCA, it is important to bear in mind and have exhausted the provisions for entry without a warrant discussed earlier.

EXERCISE#3 - ENTRY WITH A WARRANT UNDER THE BCA

Answer the questions that follow and provide references to support your answers as required.

Facilitator/Self-Study Participant Note: In the case of a sewage system, if the Inspector had reason to believe that it was not maintained or operated in accordance with Section 8.9. of Division B a warrant could be applied for. Take note that a sewage system is a building but not a room or place actually used as a dwelling. Additionally, it is an offence against Subsection 15.9-(3) of the BCA if a sewage system is not operated or maintained in accordance with the building code.

BCA Reference:
permit has not been applied for nor issued, identify the primar
In dealing with a situation where a building or change-of-us permit has not been applied for nor issued, identify the primar reason that a Building Official would apply for a warrant under Section 21 of the BCA. BCA References:

Facilitator/Self-Study
Participant Note: The
authority to seize evidence
must be specifically
requested, see Form
1.4.1.A. of Division C,
lower \(\sigma \) box, and granted
in writing on the warrant,
by the Provincial Judge or
Justice of the Peace, see
Form 1.4.1.B. lower \(\sigma \) box.

BCA Reference: _

c) Form 1.4.1.A. of Division Cd) Form 1.4.1.B. of Division C

4.	execute a warrant?					
	BCA Reference:					
5.	The Form to apply for a warrant to enter and search under Section 21 of the BCA is:					
	a) Form 1.4.1.A. of Division A					
	b) Form 1.4.1.A. of Division B					

OBC Reference:



CONCLUSION

Failure of the uninvited Building Official, RCA or Person authorized by a RCA to comply with the entry provisions of the BCA, common law and other Statutes can cause the evidence, that was not properly collected, to be thrown out of court. Without evidence there is no case. The person that enters a room or place actually being used as a dwelling without the consent of the occupier may be subject to a prosecution under the *Trespass to Property Act*.

Your right of entry under the BCA is balanced against a person's right to be secure against unreasonable search under Section 8 of the Canadian Charter of Rights and Freedoms.

If an action is brought against a Building Official, RCA or Person authorized by a RCA for trespass or the validity of the evidence questioned he/she will have to convince the court of their right to be on the property to exercise powers and perform duties under the BCA.

EXERCISE # 4- REVIEW OF MODULE SIX

In the space provided, note any comment, question or concern to be reviewed during class discussions.

Subsection 3(2) of <i>Trespass to Property Act</i> - Lawful right of Building Official, RCA and person authorized by RCA to go to front door
The right of entry provisions for Building Officials, RCAs and Persons authorized by a RCA have been reproduced in Table form on the next pages. Consult the Tables and in the space provided, note any comment, question or concern to be reviewed during class discussions.

A shaded cell means that the Situation of the Row in Column 1 does not apply to the person identified at the top of the Column.

RIGHT	S OF ENTRY	UNDER THE	BCA	
Situation	CBO CBO/I I/CBO-P I/CBO-SS	Supervisor and Managers of Inspectors and all types of Inspectors	RCA Principal	Persons authorized by RCA to carry out plans review and inspections
ENTRY UPON LAND AND	INTO BUILDING	SS, WITHOUT A	VARRANT, TO IN	ISPECT
Entry to a non-dwelling at any reasonable time when permit is issued or application is made	12(1)	12(1)	15.17-(3)1. 12(1)	15.17-(3)1. 12(1)
Entry to a dwelling at any reasonable time when permit is issued or application is made	12(1) & 16(1)(a)	12(1)(a) & 16(1)(a)	15.17-(3) 1. & 3. 12(1) & 16(1)(a)	15.17-(3) 1. and 3. 12(1) & 16(1)(a)
Entry to a dwelling at any reasonable time when no permit is issued or no application is made	16(1)(a)	16(1)(a)		
Entry to a non-dwelling at any reasonable time to determine whether a building is unsafe (pre-existing reason to believe)	15.9-(1)(a)	15.9-(1)(a)		
Entry to a dwelling at any reasonable time to determine whether building is unsafe (pre-existing reason to believe)	15.9-(1)(a) 16(1)(a)	15.9-(1)(a) 16(1)(a)		
ENTRY UPON LAND AND	INTO BUILDI	NGS, WITH A WA	RRANT ⁽¹⁾ TO INS	PECT
Entry with a warrant to inspect a non-dwelling between 6 a.m. and 9 p.m., unless the time is otherwise provided in the warrant	21	21		
Entry with a warrant to inspect a dwelling between 6 a.m. and 9 p.m., unless the time is otherwise provided in the warrant	16(1)(a.1) & 21	16(1)(a.1) & 21		

(1) Entry with a warrant is to inspect to provide evidence relevant to an offence under the BCA. e.g. **Except for a sewage system**, it is not an offence to own an unsafe building; it is an offence to fail to comply with an Order to Remedy an Unsafe Building (OTRUB) as provided by Subsection 15.9-(4) and Clause 36(1)(b) of the *Building Code Act*.

RIGHTS	OF ENTRY U	NDER THE BO	CA	
Situation	CBO CBO/I I/CBO-P I/CBO-SS	Supervisor and Managers of Inspectors Inspectors Fire Protection Inspectors	RCA Principal	Persons authorized by RCA to carry out plans review and inspections
ENTRY UPON LAND AND	INTO BUILD	INGS TO DO	REMEDIAL	WORK
Entry to a non-dwelling at any reasonable time to enforce a failed conditional permit agreement	8(6)	8(6)		
Entry to a dwelling at any reasonable time to enforce a failed conditional permit agreement	8(6), 16(1)(d) & 16(2)	8(6), 16(1)(d) & 16(2)		
Entry to a non-dwelling at any reasonable time to renovate, repair or demolish a building to remove an unsafe condition or take whatever action to protect the public when an OTRUB has not been complied with	15.9-(7)	15.9-(7)		
Entry to a dwelling at any reasonable time to renovate, repair or demolish a building to remove an unsafe condition or take whatever action to protect the public when an OTRUB has not been complied with	15.9-(7), 16(1)(d) & 16(2)	15.9-(7), 16(1)(d) & 16(2)		
Entry to a non-dwelling at any time after an Emergency Order is made, to terminate an immediate danger	15.10-(3)	15.10-(3)		
Entry to a dwelling at anytime after an Emergency Order is made, to terminate an immediate danger	15.10-(3) & 16(1)(c)	15.10-(3) & 16(1)(c)		
RIGHT OF ENTRY AT AN	NYTIME AND	ANYWHERE	WITHOUT D	ELAY
When no orders have been made, entry anywhere at anytime when the delay necessary to obtain a warrant or the consent of the occupier would result in an immediate danger to the health or safety of any person	16(1)(b)	16(1)(b)		3 12

STOP

End of Day 2

MODULE SEVEN - THE INSPECTION AND COMPLIANCE PROCESS

Facilitator Self-Study Participant Note: This Module contains a number of Decision Making Flow Charts, they are included as job-aids and to illustrate processes under the BCA. These Flow Charts are meant to be selfexplanatory so you should not spend too much time going over them; simply overview them to understand the sequence of the steps involved. Take note that the flowcharts do not represent every possibility.

INTRODUCTION

In Modules Two and Three we learned that, except where otherwise provided by the BCA, the Council of the Municipality is responsible for the enforcement of the BCA and the provisions of the OBC and that Council can select the enforcement model that best suits the needs of the Municipality. In this module, we will untangle the complexities of the BCA in obtaining compliance with the BCA and the technical requirements of the building code when dealing with the:

- ✓ construction of a building or part thereof,
- ✓ demolition of a building or part thereof,
- ✓ change of use of a building or part thereof, and
- ✓ remedy of an unsafe building.

OBJECTIVES

In this Module, you will:

* analyse the authority of Building Officials, RCA's and Persons authorized by RCA's to make and serve orders under the BCA; namely the:

Order to Comply (OTC)

Order Not to Cover or Enclose (ONTCOE)

Order to Uncover (OTU)

Stop Work Order (SWO)

Order Requiring Tests and Samples (ORTAS)

analyse the authority of Building Officials to make and serve orders; namely the:

Order to Remedy an Unsafe Building (OTRUB)

Order to Prohibit the Use or Occupancy of an Unsafe Building (OPUOUB)

Emergency Order (EO)

- ★ identify prescribed notices for various stages of construction and the associated inspections,
- ★ differentiate between the informal and formal request to comply with the BCA or the OBC, and
- ★ learn the approval process to authorize changes to the information on the basis of which a permit was issued.

THE INSPECTION and ORDER MAKING PROCESS

Enforcement methods used to verify compliance with the BCA and the OBC may differ from one municipality to another. The Act provides Inspectors, RCA's and Persons authorized by a RCA with the legal tools necessary to resolve most situations. In addition, it empowers the CBO to apply for a restraining order from the Ontario Superior Court of Justice when all else fails. The manner and frequency of the use of the enforcement provisions of the BCA depends on many factors; e.g., the track record of the builder, enforcement policy of the principal Authority, past practice, unsuccessful verbal persuasion, etc. We will look at the informal and formal methods used to gain compliance with the BCA and the OBC after a permit is issued.

MUST BUILDINGS BE INSPECTED?

This may seem like a strange question. It is reasonable to assume that if you have a job as an Inspector, the Principal Authority, the Registered Code Agency, the residents of the municipality and the Judges and Justices of the Courts expect you to inspect.

When there is no construction, demolition or change-of-use of a building, the BCA does not explicitly direct a Building Inspector or the CBO to conduct inspections; it is fair to say that the BCA implies a duty to inspect as a necessary part of the overall regulatory scheme embodied in the BCA because of the fact that the BCA gives a Chief Building Official and a Building Inspector a right of entry to inspect and authority to issue orders to obtain compliance and perform remedial work to rectify an unsafe situation when an OTRUB has not been complied with.

In the case of construction, Section 10.2 of the BCA is specific:

- (1) At each stage of construction specified in the OBC, the prescribed person shall notify the CBO or the RCA, having jurisdiction, that the construction is ready to be inspected.
- (2) After the notice is received, a Building Inspector, RCA or a Person authorized by the RCA, as the case may be, must, within the prescribed period, carry out the inspection required by the OBC.

Section 15.23 of the BCA informs us that:

Chief Building Officials and Inspectors are required to carry their Certificate of Appointment when exercising powers and performing functions under the BCA and must produce such Certificate of Appointment for inspection when requested to do so. Similarly, Persons authorized by Registered Code Agencies must carry and produce their Certificate of Authorization.

EXERCISE # 1 - PRESCRIBED NOTICES AND PRESCRIBED INSPECTIONS

Consult Subsection 1.3.5. of Div. C and answer the questions that follow.

- The notices of readiness for inspection referenced in Subsection 10.2-(1) of the BCA, to request a prescribed inspection for each stage of construction, are included in Article:
 - a) 1.3.5.1. of Division A
 - b) 1.3.5.1. of Division B
 - c) 1.3.5.1. of Division C
 - d) 1.3.5.2. of Division C
- Consider the construction of a house with an on-site sewage system. Make a list of the <u>prescribed notices</u> of each stage of construction requiring a notice of inspection.

The person to whom the Building Permit is issued is required to notify the CBO or the RCA, having jurisdiction, of the:

	-

4.	
5.	
	(a)
	(b)
	(c)
	(d)
-	
*	
).	
	ODO D-6
	OBC References:
١.	After the holder of the Building Permit has notified the CBO or the RCA, having jurisdiction, of the substantial completion of structural framing, the inspection must be undertaken not later than:
	a) two days after the receipt of the notice
	b) three days after the receipt of the notice
	c) four days after the receipt of the notice
	d) five days after the receipt of the notice
	OBC Reference:
*	After the holder of the Building Permit has notified the CBO or the RCA, having jurisdiction, of the substantial completion of the installation of the on-site sewage system, the inspection must be undertaken not later than:
	a) two days after the receipt of the notice
	b) three days after the receipt of the notice
	c) four days after the receipt of the notice
	d) five days after the receipt of the notice
	OBC Reference:

- 5. On Friday the 13th, the holder of the Building Permit notified the CBO or the RCA, having jurisdiction, of the substantial completion of footings and foundations prior to the commencement of backfilling. Accordingly, the inspection must be performed before the end of the workday on
 - a) Monday the 16th
 - b) Tuesday the 17th
 - c) Wednesday the 18th
 - d) Thursday the 19th

ORC	References:			
CLC	Noice Circos.			

STOP

DEALING WITH CONTRAVENTIONS

During the course of an inspection, the Building Official, the RCA or the Person authorized by a Registered Code Agency may observe a contravention of the BCA or the building code. The objective is to obtain compliance. It may not be necessary nor advisable to make and serve an order to obtain compliance.

INFORMAL REQUESTS TO COMPLY

Building Officials, RCA's and Persons authorized by a RCA should possess the fundamental "people skills" necessary for working with the public; professionalism, diplomacy, courtesy, common sense, and a willingness to help. Each situation must be approached with a degree of caution, calm, fairness, firmness and reasonableness.

The issuance of an order is a formal means of communicating to an offender that the matter is serious. Where routinely used for minor infractions, the effect of orders may be diminished and may sour the climate necessary for effective and efficient two way communications with the person to whom the Permit was issued. Before making and serving an order, one should consider the use of persuasion to resolve the situation.

1. Verbal persuasion:

Depending upon the severity of the matter, persuasion in person or by telephone should be used before an order is made and served. However, any verbal communication of substance regarding the possible issuance of an order should be documented.

2. Inspection report given to the builder:

An inspection report is an excellent means of providing the owner/contractor, CBO, RCA and the Principal Authority with a record of the inspection as completed. This eliminates any disparity or disagreement over the results of an inspection. Although the "inspection report" does not have the legal status of an order, it is less threatening to a builder than an order and its use may resolve the contravention.

3. Correspondence:

A letter could be forwarded to the offender, encouraging and requesting compliance and demanding a written reply and compliance before a given date.

4. Networking:

Liaison with local builders' association enables all parties to communicate concerns and procedures, and to receive feedback. This method is used to deal with issues that have broad implications. An example would be for Building Officials to inform their client group of the effects of the recent amendments to the BCA and the OBC.

THE FORMAL REQUEST TO COMPLY

First, making and serving an order is a definite and legal means of communicating to an offender that a matter is serious. Before you serve an order, especially to a first time offender, you are encouraged to use your powers of persuasion to gain compliance.

The **second** thing that you should bear in mind when considering whether to issue an order is to **determine if the contravention is within your authority**. For example, the Building Official, RCA or Person authorized by a RCA, may see problems with electrical wiring. However, neither has the authority to deal with such issues and the matter should be referred to the Electrical Safety Authority.

Third, if **orders** are not **written and served correctly**, they will not provide a foundation for a prosecution of the offence, under the *Provincial Offences Act*.

Fourth, Building Officials, RCA's and Persons authorized by a RCA should be aware of the fact that even **someone** they have been able to work with for some time **can become unreasonable** or at some point act in contravention of the law.

COMMON ASPECTS OF COMPLIANCE BY ORDERS

The common aspects of compliance by orders is outlined in Figure M7:1. (Each step in the process has been given an arbitrary number.) The illustration should be regarded as a simplification of the process for learning purposes; it does not nor can it include all the possibilities. For instance, building without a permit is an offence that could be brought in front of the courts to be dealt with according to law without first making and serving orders.

Also, you have to remember that the decision of the Ontario Court of Justice could be appealed. Take note that the appeal process under the *Provincial Offences Act* is identified as a footnote in Figure M7:1. Any questions concerning appeals from decisions of the courts should be directed to your lawyer. When using a legal process always think of the results you are trying to achieve. If your initial plan fails to achieve the desired results, what is your next plan of action?

The first step towards gaining compliance is knowledge of the Acts, Regulations and By-laws that the practitioner will be working with; including the right of entry procedures. On the basis of a person's knowledge of the rules, he/she has to determine if the conditions at hand constitute compliance or a contravention of the BCA or the OBC.

If compliance is achieved by way of an order, the matter stops there. Although not a requirement of the BCA, the practitioner should issue an inspection report stating that the order has been complied with or otherwise confirm in writing that the order has been complied with.

If the contravention continues after the comply date in the order, the matter should be brought to the attention of the person to whom the permit was issued and the contravener; this, in an effort to get compliance without having to go to court. If there is no compliance as ordered, the practitioner has no choice but to commence a proceeding under the *Provincial Offences Act*.

In court, if the defendant is found "not guilty", by implication, you have compliance because the court established that there was no contravention. If the person is found guilty, a penalty will be imposed under the authority of Section 36 of the BCA.

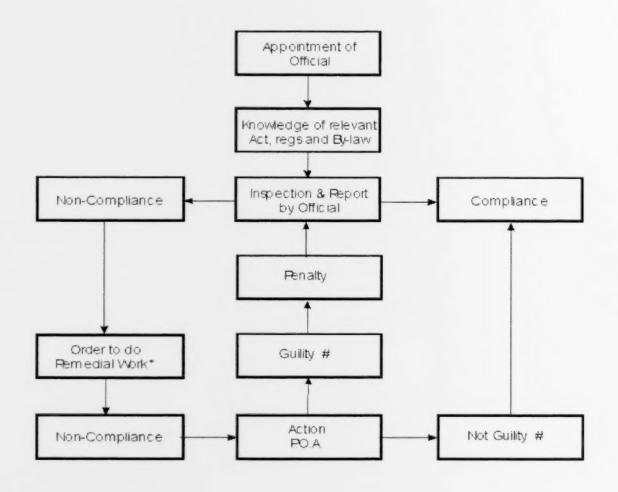
EXERCISE#2 - COMMON ASPECTS OF INSPECTIONS AND THE LEGAL PROCESS TO OBTAIN COMPLIANCE WITH AN ORDER

Review Figure M7:1 and in the space provided or on the flow chart, note any comment, question or concern. During the course, the facilitator will respond to any comment, question or concern you may have.



Figure M7:1

COMMON ASPECTS OF INSPECTIONS AND THE LEGAL PROCESS TO OBTAIN COMPLIANCE



- Order may be appealed
- # The decision of a court may be appealed.

MAKING AND SERVING ORDERS UNDER THE BCA

Facilitator/Self-Study Participant Note: In the eventuality that the matter finds itself before the courts, the five W's must be considered before making an order.

- 1 What is the contravention
- 2-Why is it a contravention
 3-Who committed the contravention
- 4 When was the contravention committed
- 5-Where was the contravention committed. These questions apply whether you are dealing with a contravention of the BCA or the OBC.

During the construction of a building, a Chief Building Official, an Inspector, a RCA having jurisdiction or a Person authorized by a RCA having jurisdiction may have to deal with one or more of the following orders:

Order to Comply (OTC)

- -Authority of CBO and Inspector to make OTC, [BCA Ss. 12.-(2) and 22.-(2)]
- -Authority of RCA and Person authorized by RCA to make OTC,

[BCA Paragraph 1. of Subsection 15.17-(3), Ss. 12(2) and Div. C, Sentence 3.7.4.4.(2)]

- -Service of OTC, [BCA Ss. 12.-(3) and S. 27]
- -Form and Contents of OTC, [BCA Ss. 12.-(4) and Div. C, Sentence 1.3.5.6.(1)]
- -Posting of OTC is optional, [BCA Ss. 12.-(5)]

• Order Not to Cover or Enclose (ONTCOE)

- -Authority of CBO and Inspector to make ONTCOE, [BCA Ss. 13.-(1) and 22.-(2)]
- -Authority of RCA and Person authorized by RCA to make ONTCOE.

[BCA Paragraph 2. Of Subsection 15.17-(3), Ss. 13(1) and Div. C, Sentence 3.7.4.4.(2)]

- -Form of ONTCOE, [BCA Ss. 13.-(1.1) and Div. C, Sentence 1.3.5.6.(1)]
- -Service of ONTCOE, [BCA Ss. 13.-(2) and S. 27]
 - -Posting of ONTCOE is optional, [BCA Ss. 13.-(3)]
- -Duty of recipient of ONTCOE to arrange for a re-inspection with authority having jurisdiction, [BCA Ss. 13.-(4) and (5)]

Order to Uncover (OTU)

- -Authority of CBO to make OTU, [BCA Ss. 13.-(6)]
- -Authority of RCA and Person authorized by RCA with Div. C, Clause 3.4.3.2.(1)(a) qualifications to make OTU, [BCA Ss. 13.-(6) and Div. C, Sentence 3.7.4.4.(1)]
- -BCA reasons for making OTU, [BCA Clauses 13.-(6)(a) to (d)]
- -Form of OTU, [BCA Ss. 13.-(1.1) and Div. C, Sentence 1.3.5.6.(1)]
- -Service of OTU on person responsible for construction, [BCA Ss. 13.-(6) and S. 27]

• Stop Work Order (SWO)

- -Authority of CBO to make SWO [BCA Ss. 14.-(1)]
- -Authority of RCA or Person authorized by RCA with Div. C, Clause 3.4.3.2.(1)(a) qualifications to make SWO, [BCA Ss. 14.-(1) and Div. C, Sentence 3.7.4.4.(1)]
- -Form of SWO, [BCA S. 14.-(1.1) and Div. C, Sentence 1.3.5.6.(1)]
- -Service of SWO, [BCA Ss. 14.-(2) and S. 27]
- -Timing of SWO, [BCA Ss. 14.-(3)]
- -Effect of SWO, [BCA Ss. 14.-(4)]
- -Referral of SWO made by RCA or Person authorized by RCA to CBO for enforcement, [BCA Ss. 14.-(5) and (6) and Div. C, Subsection 3.7.7.]
- -Effect of referral of SWO to CBO by RCA, [BCA S. 14.-(7)]
- -Powers of CBO to amend or rescind any order in respect of the matter,

[BCA Ss. 14.-(8)]

- Order Requiring Tests and Samples (ORTAS)
 - -Authority of CBO and Inspector to make ORTAS, [BCA Clause 18.-(1)(f) and Ss. 22.-(2)]
 - -Authority of RCA or Person authorized by RCA to make ORTAS.

[BCA Paragraph 4. of Subsection 15.17-(3), Clause 18.-(1)(f) and Div. C, Sentence 3.7.4.4.(2)]

- -Form of ORTAS, BCA Ss. 18.-(6)and Div. C, Sentence 1.3.5.6.(1)]
- -Service of ORTAS, [BCA S. 27]

EXERCISE #3 - ISSUING PRESCRIBED ORDERS

- The following decision making flowcharts should be regarded as approximations for learning purposes. They do not, and cannot, include all of the possibilities that you might encounter. Review each decision making flow chart and the related Form and in the space provided, note any comment, question or concern. During the course, the facilitator will assign Table-Group work and deal with your comments, questions and concerns.
- a) Order to Comply (OTC)
 [Scenario: Contrary to Div. B, Clause 9.8.4.1.(1)(b), the difference between the tallest and shortest riser in a flight of stairs in a dwelling unit is 12 mm (½ in).]

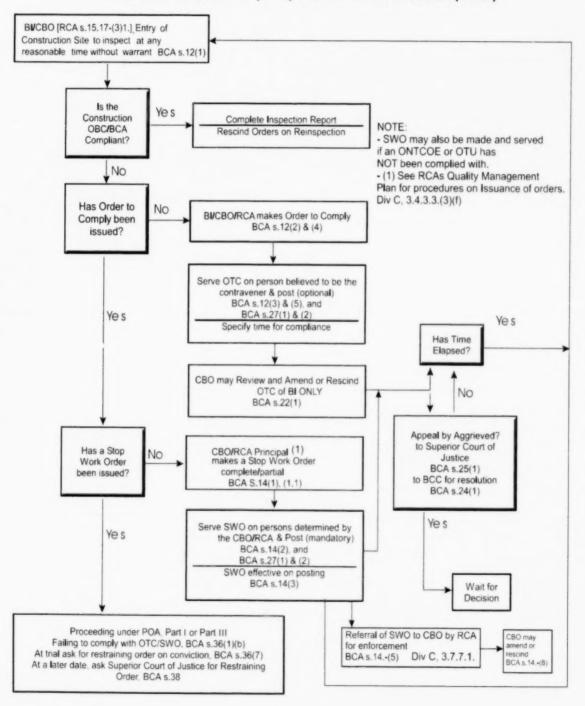
 b) Stop Work Order (SWO)
 [Scenario: Above OTC not complied with, and the person
 - b) Stop Work Order (SWO) [Scenario: Above OTC not complied with, and the person to whom the permit was issued has now given notice for the occupancy inspection under Div. C, Clause 1.3.5.1.(2)(n). It is the policy of the Principal Authority to make and serve a SWO in such circumstances.]

Order Not to Cover or Enclose (ONTCOE) [Scenario: Leaching bed constructed, treatment unit not installed, construction of dwelling unit has not started.]
Order to Uncover (OTU) [Scenario: Notice for inspection of insulation, vapour barrier and air barrier under Div. C, Clause 1.3.5.1.(2)(e) not given.]
Order Requiring Tests and Samples (ORTAS), a flow chart is not associated with the ORTAS [Scenario: Effluent sampling under Div. B, Clause 8.9.2.4.(2)(a) was not provided]
ne use of the Order Requiring Tests and Samples is limited Clause 18(1)(f) of the BCA. In you own words, explain how e Inspector having jurisdiction would proceed to require the oduction of documents or things, including drawings or pecifications, that may be relevant to the building or any part ereof under Clause 18(1)(a) or information from any person processing a matter related to a building or part thereof under ause 18(1)(c).

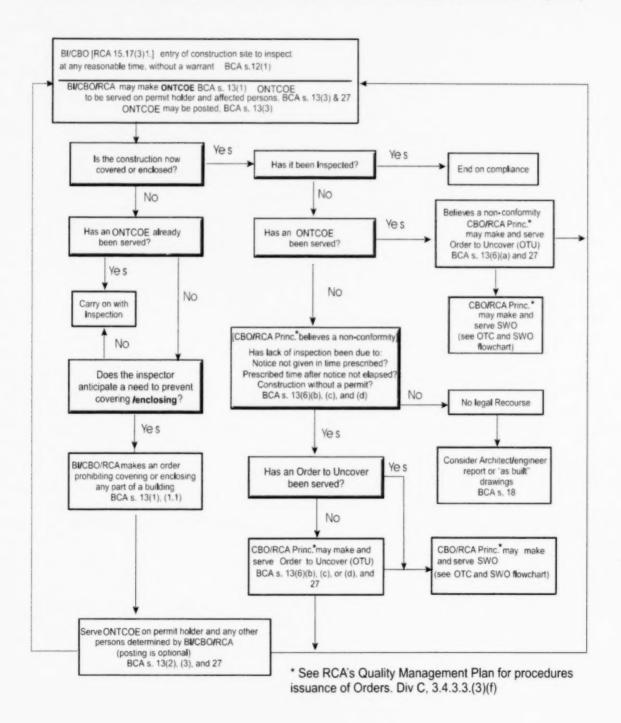
Facilitator / Self-Study Participant Note: It is an offence under Clause 36.-(1)(b) of the BCA, to fail to comply with a requirement made under the BCA.

* person having jurisdiction is the CBO. Inspector, RCA or Person authorized by RCA, as the case may be.

ORDER TO COMPLY (OTC) & STOP WORK ORDER (SWO)*



ORDER NOT TO COVER OR ENCLOSE (ONTCOE) & ORDER TO UNCOVER (OTU)



	did not form part of the application for a permit?
Facilitator/Self-Study Participant Note: The word "production" in this case neans "to show" or "to exhibit" the drawings that exist, not "to make" new drawings.	
irawings.	
	A Identify two instances that would namel the name building
	Identify two instances that would permit the person having jurisdiction to be accompanied by an expert who is not ordinarily associated with a Principal Authority or RCA. a)
	jurisdiction to be accompanied by an expert who is not ordinarily associated with a Principal Authority or RCA.
	jurisdiction to be accompanied by an expert who is not ordinarily associated with a Principal Authority or RCA. a)
	jurisdiction to be accompanied by an expert who is not ordinarily associated with a Principal Authority or RCA. a)
	jurisdiction to be accompanied by an expert who is not ordinarily associated with a Principal Authority or RCA. a)

5.	Identify the procedure that must be followed if the person having jurisdiction decides to:								
	 remove a document or thing relevant to the building or par thereof to make copies or extracts thereof under Clause 18(1)(b); 								
	_								
	ВС	CA Reference:							
	b)	take a sample (two scenarios) under Clause 18(1)(e);							
	i)								
		BCA References:							
	ii)								
		BCA References:							
6.		cording to the BCA, an order under the BCA must be ved;							
	a)	in person							
	b)	by registered mail							
	c)	in person or by registered mail							
	d)	d) in person and by registered mail							
	BC	A Reference:							

7. According to the BCA, when an Order to Comply is served by registered mail, it must be sent to the last known address of the: a) applicant for the Permit or that person's agent b) Permit holder or that person's agent c) contravener or that person's agent d) owner or that person's agent BCA References: _____ 8. According to Subsection 14.-(5) of the BCA, when a RCA makes a Stop Work Order, the RCA shall refer the matter to the CBO as soon as practicable. In your own words, explain how the referral is made. As soon as possible after making and serving a SWO, the RCA or person who has the qualifications set out in Div. C. Clause 3.4.3.2.(1)(a) and identified in Clause 3.4.3.3.(3)(f) must give to the CBO, a signed report as required Div. C. Subsection 3.7.7. The signed report must contain: 4 OBC References: 9. An Inspector has made and served an Order to Comply. While discussing the matter with the Manager of Inspectors, they conclude that a wrong OBC reference was written in the OTC.

BCA Reference: STOP

What should the Inspector do?

UNSAFE BUILDINGS - ORDERS AND REMEDIAL WORK

In the case of an existing building, where there is no Permit to Construct, Demolish or Change-the-Use-of a building, Building Officials may have to order remedial work by way of an:

✓ Order to Remedy an Unsafe Building (OTRUB), [BCA Subsections 15.9-(4)]

OF

✓ Emergency Order (EO). [BCA Subsection 15.10-(1)]

Facilitator/Self-Study
Participant Note: The
authority to make Orders
under Subsections 15.9-(4)
and 15.10-(1) are only
within the jurisdiction of
the Principal Authority.
Because an RCA is not
authorized to make such
orders, the Form of such an
order is not prescribed in
the OBC.

A review of Sections 15.9 and 15.10 reveals that the Form of the OTRUB and the EO is neither referenced in the BCA nor prescribed in the OBC. Consequently the Form of the OTRUB and the EO must be as prescribed in the Instrument of the Principal Authority as enacted under the authority of Clause 7.-(1)(f) of the BCA.

RCAs and Persons authorized by a RCA, on the other hand, are required by Div. C, Sentences 3.7.6.3.(5) to (7) of the OBC to report certain unsafe buildings to the CBO for action. The reporting is required when the unsafe building is the one for which the RCA has been appointed to inspect or another building that has been adversely affected by the construction of the building for which the RCA has been appointed to inspect.

• Order to Remedy an Unsafe Building (OTRUB)

- -Determination of Unsafe Building, [BCA Ss. 15.9-(2)]
- -Determination of Unsafe Sewage System, [BCA Ss. 15.9-(3)]
- -Authority of CBO and Inspector to make OTRUB, [BCA Ss. 15.9-(4) and 22.-(2)]
- -Service of OTRUB, [BCA Ss. 15.9-(5) and S. 27]
- -Posting of OTRUB is optional, [BCA Ss. 15.9-(5)]

Order to Prohibit Use or Occupancy of Unsafe Building (OPUOUB)

- -Authority of CBO to make OPUOUB, [BCA Clause 15.9-(6)(a)]
- -Service of OPUOUB, [BCA Ss. 15.9-(8) and S. 27]
- -Timing of OPUOUB, [BCA Ss. 15.9-(9)]

Emergency Order (EO)

-Authority of CBO to make EO to terminate an immediate danger to the health or safety of any person, [BCA 15.10-(1)]

-Service of EO either before or after measures are taken to terminate the immediate danger,

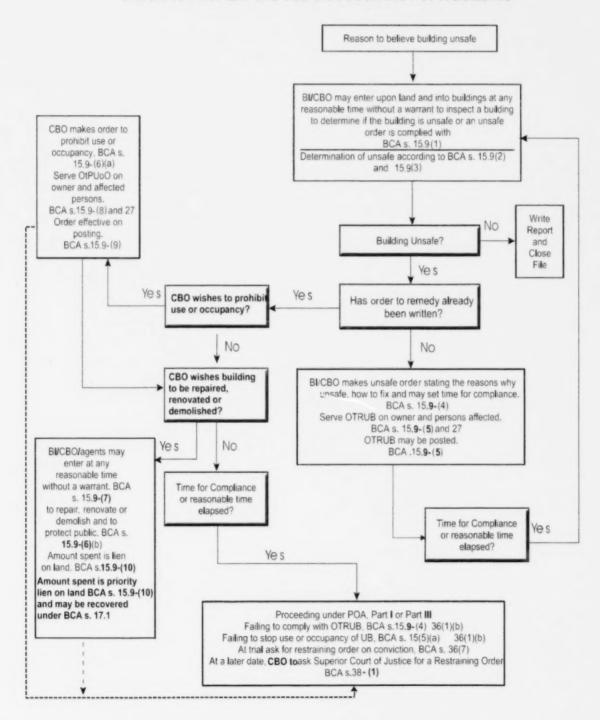
[BCA Ss. 15.10-(2),(3) and (5)]

- -Posting of EO is compulsory, [BCA Ss. 15.10-(2) and (5)]
- -Service and posting of Statement of Work Done and Statement of Costs to terminate immediate danger, [BCA Ss. 15.10-(2), (5) and (6)]
- -Application by CBO to Court to confirm EO, [BCA Ss. 15.10-(7)]

EXERCISE#4 - UNSAFE BUILDINGS, THE OTRUB AND THE EO

Consult Sections 15.9 and 15.10 of the BCA and deal with the questions that follow.

ORDER TO REMEDY UNSAFE BUILDINGS ORDER TO PROHIBIT THE USE OR OCCUPANCY OF A BUILDING



EMERGENCY ORDERS

Upon Inspection - immediate danger to health or safety of any person identified. BCA s.15.10-(1) Serve EO on owner, possessor and affected persons. BCA s. CBO may make EO identifing danger and immediate remedial measures. BCA s.15.10-(1) 15.10-(2) and 27 No **Ves** Has municipality taken Decision to serve EO measures to terminate immediately? Yes Did owner terminate immediate danger? Stop danger Process immediately? No Ye s Post EO. BCA s. 15.10-(3) No As soon as practicable CBO can take measures. Serve EO on owner, possessor and BCA s.15.10-(3) CBO can take measures. BCA affected persons and 15.10-(3) Serve and post description of work done and details of amount spent. BCA s. 15.10-(6) leads to 15.10-(2) & 27 CBO/Bl/agents can enter at any time without warrant and take CBO/Bl/agents can enter at any time measures to terminate without warrant and take measures immediate danger. BCA s.15.10-(3) terminate immediate danger. BCA s. 15.10-(3) As soon as practicable CBO must apply to Superior Court of Immediate Danger Terminated. Justice to confirm EO. BCA s. 15.10-(7) Immediate Danger Terminated. As soon as practicable Judge confirms EO? BCA Judge modifies EO? BCA Judge rescinds EO. Serve and post description of s.15.10-(8)(a) s. 15.10-(8)(a) BCA s. 15.10-(8)(a) work done and details of amount spent to owner, possessor and Yes affected persons. BCA s. Yes 15.10-(6) leads to 15.10-(2) & 27 Judge determines whether amount spent is recoverable. BCA s. 15.10-(8)(b) Reasonable exercise of emergency powers under 15.10-(3) of BCA in terminating immediate Not at all. danger's Ye s Yes Yes No Amount determined is lien on land, added to tax roll collected as municipal real property taxes. No liability. BCA s. 15.10-(10) Big TROUBLE BCA s.15.10-(4

Facilitator/Self-Study
Participant Note: The
Order prohibiting the use
or occupancy of an unsafe
building (OPUOUB) where
the Order to remedy the
Unsafe Building (OTRUB)
has not been complied with
and the CBOs authority to
do remedial work will be
dealt with in Module 13-A-,
in the CBO/RCA portion of
this course.

*	In your own words define what an unsafe building is.
	 a) A building that is not a sewage system is unsafe if the building is;
	1.
	2
	3
	BCA References:
	b) A sewage system is unsafe if it is:
	1.
	2
	BCA Reference:
	According to the BCA, the OTRUB must be served to the owner, each person apparently in possession of the building and such other persons affected thereby. The determination of "such other persons affected thereby" is to be made by the:
	a) Building Inspector who made the OTRUB under the authority of Subsection 15.9-(4) of the BCA
	b) Person authorized by the RCA who discovered and reported the unsafe building
	c) Chief Building Official
	d) the Clerk of the Municipality who has access to the Roll Book
	BCA Reference:

Facilitator/Self-Study
Participant Note: The EO
will be dealt with in greater
detail in Module 13, the
CBO/RCA segment of this
course.

- According to the BCA, the authority to make an Emergency Order lies with;
 - a) the Building Inspector who discovered the immediate danger
 - b) the RCA Person who has the qualifications set out in Div.
 C, Clause 3.4.3.2.(1)(a) and to whom the immediate danger was reported
 - the Person authorized by the RCA who discovered the immediate danger
 - d) the CBO who discovered or to whom the immediate danger was reported

004	D (
BCA	Reference:				

- 4. A CBO is empowered by the BCA to make an EO when;
 - a) a building poses an immediate danger to the health or safety of any person
 - b) a non-conformity with the Property Standards By-law poses an immediate danger to the health or safety of any person
 - he/she has the qualifications of an Inspector under Div. C, Table 3.5.2.1. for the type of building that poses an immediate danger to the health or safety of any person
 - d) he/she has the qualifications of an Inspector under Div. C, Table 3.5.2.2. for the type of building that poses an immediate danger to the health or safety of any person

BCA	Reference:	

5. Consider the decision making flow chart for making and serving the Order to Remedy an Unsafe Building and the Order to prohibit the Use or Occupancy of an Unsafe Building, on page 21. In the space provided, note any comments, questions or concerns. During the course, the facilitator will respond to any comment, question or concern you may have.

6. Consider the decision making flow chart for making, serving and applying to the Superior Court of Justice to confirm the Emergency Order, on page 22. In the space provided, note any comments, questions or concerns. During the course, the facilitator will respond to any comment, question or concern you may have.

STOP

DUTY TO COMPLY WITH THE BCA AND THE OBC

According to Subsection 8.-(11) of the BCA,

No person shall construct or demolish a building or cause a building to be constructed or demolished except in accordance with the BCA and the OBC.

Subsection 8.-(13) goes on to say:

No person shall construct or demolish a building or cause a building to be constructed or demolished except in accordance with the plans, specifications, documents and any other information on the basis of which a permit was issued or any changes to them authorized by the Chief Building Official. You will recall from Module Five, that during the plans examination process, Clause 8.-(2)(a) of the BCA implies that the intention to use of an innovative material, system or building design that is not recognized by the OBC must be accepted as an alternative solution, as an Authorization by the BMEC or by a Ruling by the Minister before the permit is issued.

After the permit is issued, the process is guided by Subsection 8.-(12) of the BCA which operates in conjunction with the Instrument of the Principal Authority enacted under the authority of Section 7 of the BCA.

NOTICE OF CHANGE TO PERMIT INFORMATION - NO RCA

When a RCA is <u>NOT</u> involved, Subsection 8.-(12) of the BCA informs us as follows:

No person can make a material change or cause a material change to be made to a plan, specification, document or other information on the basis of which a permit was issued without notifying, filing details with and obtaining the authorization of the CBO.

Wording in the Building By-law could be as follows:

After the issuance of the permit under the BCA, notice of any material change to a plan, specification, document or other information on the basis of which the permit was issued, must be given in writing to the Chief Building Official, together with the details of such change which is not to be made without his or her written authorization.

The Chief Building Official's written authorization may take the form of a new permit or a revised permit.

NOTA BENE: if the Instrument of the Principal Authority is not structured to deal with changes to permit information, it needs to be amended.

NOTICE OF CHANGE TO PERMIT INFORMATION - WITH AN RCA, by way of a "CHANGE CERTIFICATE"

When a RCA has been appointed to undertake inspections, the CBO is notified of the material change to a plan, specification, document or other information on the basis of which the permit was issued by way of a Change Certificate.

[BCA 8.-(14) and Div. C, Sentences 3.7.4.3.(1), (2), (4) and (7) and 3.7.6.3.(2), (3), (4) and (8)]

Subsection 8.-(14) of the BCA informs us that:

If a request for authorization referred to in Subsection 8.-(12) or 8.-(13) is accompanied by a Change Certificate that contains the prescribed information, the CBO is not entitled to refuse to authorize the change on the grounds that the construction of the building to which the certificate relates does not comply with the OBC.

The Chief Building Official's written authorization may take the form of a new permit or a revised permit.

NOTA BENE:

If the Instrument of the Principal Authority is not structured to deal with changes to permit information, it needs to be amended.

INNOVATIVE MATERIALS, SYSTEMS AND BUILDING DESIGNS

You will recall from Module Five, that an innovative material, system or building design that is not authorized in the OBC may be used as a(n):

Facilitator/Self-Study
Participant Note:
Alternative Solutions will
be dealt with in greater
detail in Module 12.

1. Accepted Alternative Solution,

or

Authorization by the (BMEC),

or

3. Ruling by the Minister,

DESIGN WILL ACHIEVE THE LEVEL OF PERFORMANCE REQUIRED BY THE TECHNICAL PROVISIONS OF DIVISION B.

While the use of innovative materials, systems and building designs is usually dealt with during the permit application and plans review process, it could happen during construction and inspection activities.

EXERCISE # 5 - REVIEW OF MODULE SEVEN

Review the following topics and in the space provided, list your comments, questions and concerns for review with the Facilitator during class.

Duty of Chief Building Official and Inspectors to carry and produce their Certificate of Appointment upon request. BCA Section 15.23

As the case may be, the Certificate of Appointment is obtained from the Clerk of the Municipality under Subsection 3.-(8), the Medical Officer of Health or the Secretary-Treasurer of a Planning Board or Conservation Authority under Subsection 3.1-(6), 6.1-(7) or 6.2-(6).

Article 3.7.4.5.	
BCA Subsections 15	ization upon request. .17-(1) and (2) and Section 15.23 and Div. C
	horized by a RCA, to carry and produce thei

Prescribed Notices to Inspect
BCA Subsection 10.2-(1) and Div. C, Article 1.3.5.1.

Module Seven	- THE INSPECTION and COMPLIANCE PROCESS - Page 30
	The Order Not to Cover or Enclose (ONTCOE)
	The Order to Uncover (OTU)
	The Stop Work Order (SWO)
	The Order Requiring Tests and Samples (ORTAS)
	UNSAFE BUILDINGS, ORDERS & REMEDIAL WORK The Order to Remedy an Unsafe Building (OTRUB)
	The Order to Prohibit Use or Occupancy of Unsafe Building (OPUOUB)
	The Emergency Order (EO)

oddie Seven	- THE INSPECTION and COMPLIANCE PROCESS - Page 31
	Duty of RCA to report unsafe building to CBO [Div. C, Sentences 3.7.6.3.(5), (6) and (7)]
	Duty to construct or demolish or cause a building to be constructed or demolished in accordance with the BCA and the OBC [BCA 8(11)]
	Duty to apply to CBO for authorization to change permit information, RCA not involved [BCA 8(12)]
	Duty to construct in accordance with permit information and material changes as authorized by CBO [BCA 8(13)]
	Change to permit information by way of a "Change Certificate" when an RCA is involved [BCA 8(14)]

INNOVATIVE MATERIALS, SYSTEMS AND BUILDING DESIGNS Alternative Solutions will be dealt with in Module 12 BMEC Authorizations Rulings by the Minister of Municipal Affairs and Housing

	ORDERS UND	ER THE BCA		
Situation	CBO CBO/I I/CBO-P I/CBO-SS	Supervisors and Managers of Inspectors and all types of Inspectors	RCA Person with Div. C, 3.4.3.2.(1)(a) qualifications	Persons authorized by RCA to carry out plans review and inspections
ORDER TO COMPLY - Form	of OTC, BCA Subs	section 12(4) and	Div. C, Sentence	1.3.5.6.(1)
Authority to make OTC	22(2) 12(2)	12(2)	15.17-(3) 1. 12(2) and Div. C. 3.7.4.4.(2)	15.17-(3) 1. 12(2) and Div. C, 3.7.4.4.(2)
OTC served on contravener or agent	12(3) & 27(1)	12(3) & 27(1)	12(3) & 27(1)	12(3) & 27(
OTC served personally or by registered mail	27	27	27	27
OTC to specify nature of contravention, its location and nature of required compliance	12(4)	12(4)	12(4)	12(4)
Posting of OTC is optional	12(5)	12(5)	12(5)	12(5)
ORDER NOT TO COVER OR ENCLO	SE - Form of ONT	COE, BCA Ss. 13.	-(1.1) & Div. C, Ser	ntence 1.3.5.6.(
Authority to make ONTCOE pending a re-inspection	22(2) 13(1)	13(1)	15.17-(3) 2. 13(1) and Div. C 3.7.4.4.(2)	15.17-(3) 2. 13(1) and Div. C 3.7.4.4.(2)
ONTCOE served on permit holder/agent and others/agent as determined by Inspector	13(2) & 27(1)	13(2) & 27(1)	13(2) & 27(1)	13(2) & 27(
ONTCOE served personally or by registered mail	27	27	27	27
Posting of ONTCOE is optional	13(3)	13(3)	13(3)	13(3)
ORDER TO UNCOVER - Form	of OTU, BCA Subs	ection 13(1.1) an	d Div. C, Sentence	e 1.3.5.6.(1)
Authority to make OTU	13(6)		13(6) and Div. C 3.7.4.4.(1)	
OTU served on persons responsible for the construction or their agent(s)	13(6) & 27(1)		13(6) & 27(1)	
OTU served personally or by registered mail	27		27	
Posting of OTU is:	unregulated		unregulated	

(ORDERS UND	ER THE BCA		
Situation	CBO CBO/I I/CBO-P I/CBO-SS	Supervisors and Managers of Inspectors and all types of Inspectors	RCA Person with Div. C 3.4.3.2.(1)(a) qualifications	Persons authorized by RCA to carry out plans review and inspections
STOP WORK ORDER - Form of	f SWO, BCA Subse	ection 14(1.1) an	d Div. C, Sentence	1.3.5.6.(1)
Authority to make SWO	14(1)		14(1) and Div. C 3.7.4.4.(1)	
SWO served on persons / agents affected thereby as determined by the CBO or RCA having jurisdiction	14(2) & 27(1)		14(2) & 27(1)	
SWO served personally or by registered mail	14(2) & 27		14(2) & 27	
Posting of SWO is compulsory	14(2)		14(2)	
SWO is effective from the time it is posted	14(3)		14(3)	
After the SWO is posted, only work that is necessary to comply with the outstanding order under Section 12 or 13 can proceed	14(4)		14(4)	
ORDER Requiring Tests and Sample	es - Form of ORTAS	, BCA Clause 18(1)(c) & Div. C, Sent	ence 1.3.5.6.(1)
Authority to make order requiring a person to take and supply at that person's expense such tests and samples as specified in the ORTAS	22(2) 18(1)(f)	18(1)(f)	15.17-(3) 4. 18(1)(f)	15.17-(3) 18(1)(f)
ORTAS served on persons / agents affected thereby as determined by Inspector having authority making the ORTAS	27(1)	27(1)	27(1)	27(1)
ORTAS served personally or by registered mail	27	27	27	27
Posting of ORTAS is	unregulated	unregulated	unregulated	unregulated

0	RDERS UND	DER THE BCA		
Situation	CBO CBO/I I/CBO-P I/CBO-SS	Supervisors and Managers of Inspectors and all types of Inspectors	RCA Person with Div. C 3.4.3.2.(1)(a) qualifications	Persons authorized by RCA to carry out plans review and inspections
ORDER TO REMEDY UNSA	FE BUILDING -	Form as determine	ed by Principal Au	thority
Authority to make OTRUB	22(2) 15.9-(4)	15.9-(4)		
OTRUB served on owner / agent, each occupier / agent and other persons affected thereby / agent as determined by the CBO	15.9-(5) & 27(1)	15.9-(5) & 27(1)		
OTRUB is served personally or by registered mail	27	27		
Posting of OTRUB is optional	15.9-(5)	15.9-(5)		
ORDER TO PROHIBIT THE USE OR OCCU	PANCY OF AN UN	SAFE BUILDING - For	m as determined by	Principal Authority
Authority to make OPUOUB when the OTRUB is not complied with	15.9-(6)(a)			
OPUOUB served on owner / agent, each occupier / agent and other persons affected thereby / agent as determined by the CBO	15.9-(8)			
OPUOUB is served personally or by registered mail	27			
Posting of OPUOUB is compulsory	15.9-(8)			
OPUOUB is effective from the time it is posted	15.9-(9)			

C	RDERS UND	ER THE BCA		
Situation	CBO/I CBO/I I/CBO-P I/CBO-SS	Supervisors and Managers of Inspectors and all types of Inspectors	RCA Person with Div. C 3.4.3.2.(1)(a) qualifications	Persons authorized by RCA to carry out plans review and inspections
EMERGENCY ORD	ER - Form as o	letermined by Pri	ncipal Authority	
Authority to make EO to take measures to immediately terminate a danger	15.10-(1)			
EO served on owner / agent, each occupier / agent and other persons affected thereby / agent as determined by the CBO	15.10-(2) & 27(1)			
EO may be served either before or after the measures are taken to immediately terminate a danger	15.10-(3)			
Posting of EO is compulsory	15.10-(2)			
When the EO was not served before measures were taken to immediately terminate a danger, the CBO must serve and post the EO along with a copy of details of work done and amount spent to do so	15.10-(5)			
When the EO was served before measures were taken to immediately terminate a danger, the CBO must serve and post the a copy of details of work done and amount spent to do so	15.10-(6)			
After having served the EO and a copy of the details of work done and amount spent to do so, the CBO must apply to the Superior Court of Justice for an order confirming the EO	15.10-(7)			

MODULE EIGHT - THE OCCUPANCY PROCESS

INTRODUCTION

The occupancy process under the BCA and the OBC recognizes that there are certain situations where it may be desirable for a building to be occupied before the construction is completed.

In this module you will be introduced to the process whereby occupancy of a building or part thereof is permitted before the construction is complete and the conditions which must be met in order to ensure the safety of the occupants.

Similarly, you will become familiar with the conditions which must be met prior to permitting the occupancy of a completed building and after completion of a building that was occupied prior to its completion.

OBJECTIVES

By the end of this module, you will:

- analyse the conditions which will permit the occupancy of an unfinished building or part thereof,
- determine when an occupancy permit is required,
- recognize the conditions specific to the occupancy of certain unfinished residential buildings,
- establish when notification to the CBO of the completion of the construction of the building is required,
- ★ identify the rules for the occupancy of completed buildings,
- specify the significant time frames for notification and inspection of completed buildings.

THE rules of the <u>BCA and the OBC</u> for the OCCUPANCY of UNFINISHED BUILDINGS

Facilitator / Self-Study
Participant Note: The
exception of Subsection
11.-(1) of the BCA sends
you to Div. C. Subsection
1.3.3. for the occupancy of
unfinished buildings.

Subsection 11.-(1) of the *Building Code Act* states, "Except as authorized by the building code, a person shall not occupy or use a building or part of a building that is newly erected or installed or permit it to be occupied or used until the requirements set out in this section are met."

Facilitator / Self-Study
Participant Note: This
portion of the Module deals
with the EXCEPTIONS to
the BCA as found in the
OBC for the occupancy of a
building or part thereof
that has not been fully
completed at the date of
occupation.

THE EXCEPTIONS OF THE OBC FOR THE OCCUPANCY OF UNFINISHED BUILDINGS

Div. C, Subsection 1.3.3. sets out the following conditions which must be met before an unfinished building may be occupied or used.

Except as permitted under Div. C, Article 1.3.3.2., a permit
must be issued by the CBO, or the CBO's designate,
authorizing the occupation of an unfinished building or part
thereof.

[Div. C, Sentence 1.3.3.1.(1), "Occupancy Permit"]

 Not including buildings of residential occupancy described in Div. C, Subclauses 1.3.3.2.(1)(a)(i) to (iv), specified elements of the building MUST be completed before the building or part thereof can be occupied with a permit.

[Div. C, Clauses 1.3.3.1.(2)(a) to (q), "Occupancy Permit"]

 Specified Part 9 buildings of residential occupancy meeting stated conditions of occupancy may be occupied without an "Occupancy Permit" being issued by the CBO or the CBOs designate.

[Div. C, Sentence 1.3.3.2.(1), "Conditions for Residential Occupancy"]

4. Where an RCA has been appointed to perform the functions described in Section 15.15 of the BCA by the Principal Authority under Section 4.1, Paragraph 6. of Subsection 15.15-(1) of the BCA and Div. C, Sentence 3.7.3.1.(1) inform us that the RCA may be appointed to perform the functions set out in Sentence 3.7.4.3.(5). When that is the case, the RCA would issue a "Certificate for the occupancy of a building not fully completed", See Div. C, Sentences 3.7.4.3.(1), (2), (5) and (7).

After the CBO or the CBOs designate has received the "Certificate for the occupancy of a building not fully completed" from the appointed RCA, the CBO or the CBOs designate must issue the Occupancy Permit referred to in Div. C, Sentence 1.3.3.1.(1).

[Div. C, Sentence 1.3.3.1.(3), "Occupancy Permit"]

5. In all cases, by way of Subsection 10.2-(1) of the BCA, Div. C, Clause 1.3.5.1.(2)(n) informs us that the person to whom a permit is issued under section 8 of the BCA must notify the CBO or RCA having jurisdiction of:

The completion of construction and installation of components required to authorize the issuance of an occupancy permit under Div. C, Sentence 1.3.3.1.(2) or to allow occupancy, without an occupancy permit, under Sentence 1.3.3.2.(1).

By way of Subsection 10.-(2) of the BCA and Div. C, Sentence 1.3.5.3.(1), the Inspector or the RCA, having jurisdiction, must do the occupancy inspection referred to in Clause 1.3.5.1.(2)(n) within 2 days after the receipt of the notice.

In all cases, notification must be given to the CBO, by the person who has occupied or has permitted the occupancy under Div. C, Subsection 1.3.3. when the construction of the building is completed.

[Div. C, Sentence 1.3.3.3.(1), "Notification"].

EXERCISE # 1 - OCCUPANCY OF AN UNFINISHED BUILDING UNDER THE EXCEPTIONS OF THE OBC

When prompted, provide references to support your answer. As you go along, you are reminded to INSERT CROSS-REFERENCES in your copy of the Table of Contents to BCA and the Index of the OBC.

- 1. According to the wording in the OBC, who may permit the occupancy of an unfinished building after an occupancy permit has been issued by the CBO or his/her designate?
 - a) the building owner
 - b) the general contractor
 - c) the design engineer and architect
 - d) a person

OBC I	Reference:		
000	Ciciononico.		

- After the Inspector having jurisdiction has carried out the inspection referenced in Div. C, Clause 1.3.5.1.(2)(n) and concluded that the building of residential occupancy described in Subclauses 1.3.3.2.(1)(a)(i) to (iv) complies with the requirements of Clauses 1.3.3.2.(1)(b), (c) and (d), who may permit the occupancy of such unfinished building?
 - a) a person
 - b) the person to whom the permit is issued

OBC Reference: _____

- c) the Inspector who carried out the inspection
- d) the Chief Building Official

3.	In	your	area,	how	is	the	identity	of	the	person	that	has
							an unfir			0.	unde	r the

- 4. Which of the following describes an unfinished Part 9 building of residential occupancy which may be occupied under Div. C, Article 1.3.3.2.?
 - a) the middle unit of a 2 storey townhouse building with 5 units
 - a two storey apartment building with six dwelling units per floor sharing a public corridor
 - c) a triplex
 - d) a one-storey motel

OBC References:

- Which of the following describes an unfinished Part 9 residential building which may <u>NOT</u> be occupied under Div. C, Article 1.3.3.2.?
 - a) a 3 storey apartment building with two dwelling units per floor where each unit has a separate exit
 - b) a 2 storey apartment building with two dwelling units per floor where each unit has a separate exit
 - c) a duplex where the units share a means of egress
 - d) a duplex where each dwelling unit has a separate exit

OBC	Reference:	

- 6. Where a building has been occupied prior to its completion, under the provisions of Div. C, Subsection 1.3.3. Forthwith upon the completion of the building, the person who has permitted the building to be occupied must notify the:
 - a) mortgagor
 - b) CBO
 - c) CBO or RCA having jurisdiction
 - d) Fire Department OBC Inspector

OBC Reference:			
ODO INCICIONOC.			



THE <u>BUILDING CODE ACT</u> and the OCCUPANCY of COMPLETED BUILDINGS

The occupancy of a building which has been completed is an obviously simpler process than that for a building still undergoing construction.

All the conditions and requirements for the occupancy of a completed building are found in Section 11 of the BCA.

RULES OF THE BCA FOR OCCUPANCY OF COMPLETED BUILDINGS

Subsection 11.-(1) of the BCA states that;

a person is not to occupy or use a building or a part thereof that is newly erected or installed or permit it to be occupied or used unless the requirements of Section 11 of the BCA are complied with.

- In all cases, a <u>notice</u> of the date of completion must be given to the CBO or RCA having jurisdiction. [Subsection 11.-(2) of the BCA]
- When a <u>RCA</u> has been <u>appointed</u> to perform the functions described in Section 15.15 by the Principal Authority under Section 4.1 of the BCA, the RCA is compelled to issue a <u>final certificate</u> that contains the information prescribed in Div. C, Sentences 3.7.4.3.(1), (2), (6) and (7). [Subsection 11.-(3) of the BCA]
- If a <u>RCA</u> is <u>NOT</u> involved, the occupancy process is under the jurisdiction of the Principal Authority. After the notice of completion is given, the building may be occupied if either;
 - a) the building was inspected <u>OR</u> 10 days have passed after the notice of completion was served on the CBO,

AND

 all Orders to Comply made by the CBO or an Inspector under Section 12 of the BCA have been complied with. [BCA Subsection 11.-(4)]

NOTA BENE:

You may ask; "Do the provisions of Section 11 of the BCA apply to a building which was previously given an occupancy permit prior to its completion, under the provisions of Div. C, Article 1.3.3.1. or 1.3.3.2.?" The answer is YES.

EXERCISE # 2 - OCCUPANCY OF A COMPLETED BUILDING UNDER THE BCA

To complete this exercise, you will need to consult Section 11 of the BCA and Div. C, Sentences 3.7.4.3.(1), (2), (6) and (7).

 Consider the conditions and requirements dealing with the occupancy of a newly completed building and in the space provided insert the appropriate BCA references.

Conditions / requirements to be fulfilled for the occupancy of a newly completed building	BCA reference
requirements as set out in the BCA must be satisfied prior to permitting the occupancy of the building	
notice of the date of completion of the building must be given to the CBO or the RCA having jurisdiction	
if an RCA has been performing the inspections through an appointment under Section 4.1 of the BCA, the RCA must issue a Final Certificate containing the information prescribed in the OBC	
if the inspections have been carried out by the Principal Authority, the building MUST be inspected, or 10 days must lapse from the date of the notification before the building can be occupied	
if the inspections have been carried out by the Principal Authority, ALL orders under Section 12 of the BCA must be complied with before the occupancy of the building can occur	

IOTES:				
		 		_

2. When the Building Officials of a Principal Authority are responsible for the inspections, the occupancy of a new constructed building cannot occur if an Order to Comply, under Section 12 of the BCA, has not been complied with. When a RCA is responsible for the inspections, explain the princip condition that must exist before a Final Certificate is issued.
OBC Reference:
EXERCISE # 3- REVIEW OF MODULE EIGHT
This is a discussion exercise to review the subject matter of the module. In the space provided, under each heading, note are comments, concerns or questions. During the course, the facilitator will respond to any comment, question or concern you may have.
The occupancy of unfinished buildings BCA Subsection 11(1) → Div. C, Subsection 1.3.3.
The occupancy of unfinished buildings with a "Occupancy Permit" when the inspections are under the jurisdiction of a Principal Authority Div. C, Sentences 1.3.3.1.(1) and (2)

	C, Sentences 1.3.3.1.(1), (2) and (3)
Section unfirmins procedured occurrent occurre	Building Code exceptions from the requirements of ion 11 of the BCA allow for the occupancy of certain ished Part 9 residential buildings upon passing an ection only and without a "Certificate for the pancy of a building not fully completed" nor accupancy Permit" C, Clause 1.3.5.1.(1)(n) and Article 1.3.3.2.
build	required notification to the CBO on completion of a ling that was occupied prior to its completion C, Article 1.3.3.3.
	ES FOR THE OCCUPANCY OF COMPLETED

Facilitator/Self-Study Participant Note: There are no BCA nor OBC requirements to issue an "Occupancy Permit" in the case of the occupancy of a completed building.

The occupancy of finished buildings, under the BCA, when the inspections are under the jurisdiction of a **Principal Authority** BCA Subsection 11.-(4)

The occupancy of finished buildings, under the BCA, when the inspections are under the jurisdiction of a RCA, the Final Certificate is required

BCA 11.-(3) and Div. C, Sentence 3.7.4.3.(6)

Notification to the CBO for the occupancy of a newly completed building that was previously occupied as an unfinished building

Div. C, Sentence 1.3.3.3.(1)



MODULE NINE - CO-OPERATION, CONFLICT AND DISPUTE RESOLUTION UNDER THE BUILDING CODE ACT

INTRODUCTION

In order to make the enforcement of the provisions of the BCA and the OBC smoother, the BCA requires that individuals cooperate with and not obstruct or hinder Chief Building Officials, Inspectors, RCA,s and Persons authorized by a RCA (person having jurisdiction) in the exercise of a power or the performance of duties. The BCA provides penalties for such offences.

Since individual interpretations may differ, and this is not necessarily to be construed as obstruction or hindrance of a person having jurisdiction in the performance of his/her duties, the BCA contains provisions to help resolve disputes.

One important point worth mentioning here, is that pursuant to Subsection 22.-(1) of the BCA, a CBO may review and amend or rescind orders made by an Inspector. When the order is made by a RCA or a Person authorized by a RCA, the review process is slightly different. As evidenced by Subsection 14.-(8) of the BCA, the authority of the CBO to amend or rescind any order made by a RCA or a Person authorized by a RCA does not kick in until and unless the RCA has made a Stop Work Order and referred the matter to the CBO for enforcement; see Div. C, Subsection 3.7.7.

OBJECTIVES

By the end of this module, you will be able to:

- identify those situations which the BCA deems to be obstructions against a person having jurisdiction
- * overview the hierarchy of the Ontario Court System
- discuss the BCA dispute resolution mechanisms afforded to the:
 - Chief Building Official,
 - Professional Engineers of Ontario,
 - Ontario Association of Architects,
 - Building Code Commission, and
 - Superior Court of Justice.

RELEVANT BCA REFERENCES:

The relevant Sections of the BCA dealing with the topics we will address in this module are:

Under General Powers of Inspection and Enforcement

- Section 19 "Obstruction of Inspectors, etc"
- Section 20 "Obstruction or Removal of Posted Order"

Under Dispute Resolution, Reviews and Appeals

- Subsection 22.-(1) "Review of Inspector's Order" by CBO
- Section 23 "Building Code Commission" (BCC)
- Section 24 "Dispute Resolution" by BCC
- Section 25 "Appeal to Court" Superior Court of Justice
- Section 26 "Further Appeal" to Divisional Court

Under General

- Section 38 "Restraining Order"

Under Construction and Demolition

- Subsection 8.-(9), "Referral of Plans, etc" to OAA and PEO
- Section 14 "Stop Work Order"

GENERAL POWERS OF INSPECTION AND ENFORCEMENT - OBSTRUCTION OF PERSON HAVING JURISDICTION UNDER THE BCA

As evidenced by Subsections 19.-(1) and (3) of the BCA, a person having jurisdiction may enter, inspect, examine, test or inquire in the exercise of a power or the performance of a duty under the Act.

The basic rule of Subsection 19.-(1) of the BCA is that no one may hinder or obstruct a person having jurisdiction in the performance of his/her duties under the BCA. Furthermore, Clause 36.-(1)(b) of the BCA makes it an offence to fail to comply with an order, direction or other requirement made under this Act.

There is ONE NOTABLE EXCEPTION to this rule; it is NOT considered an obstruction or hindrance of the person having jurisdiction, in the case of a room or place actually used as a dwelling, when entry is refused by the occupier, or the person having jurisdiction is asked to leave by the occupier, when the person having jurisdiction, is NOT acting under the circumstances spelled out in Subsection 19.-(2) of the BCA.

In other words, refusal of entry to a room or place used as a dwelling is the right of the occupier and is not an obstruction or hindrance unless the person having jurisdiction is acting under a court-issued warrant or the provisions of Clause 16.-(1)(b), (c) or (d) of the BCA apply.

The Building Code Act specifically lists those actions which are considered as obstructions or hindrances and therefore offences. under the BCA.

The following actions are considered obstructions and therefore offences; if:

- 1. the occupant of a room or space used as a dwelling refuses entry or refuses to permit the person having jurisdiction to remain when the person having jurisdiction has a warrant.
 - [BCA Subsection 19.-(2) & Clauses 36.-(1)(b) and (c)]
- 2. the occupant fails to assist a person having jurisdiction in the performance of his/her duties under the BCA. [BCA Subsection 19.-(3) & Clauses 36.-(1)(b) and (c)]
- 3. a person refuses to produce a document, drawing, specification, thing, information, test or sample requested by a person having jurisdiction under Clauses 18.-(1)(a), (c) or (e) of the BCA. [BCA Clauses 19.-(4)(a) and (b) and 36.-(1)(b) and (c)]
- 4. a person attempts to hide or remove any order posted by a person having jurisdiction. [BCA Section 20 and Clauses 36.-(1)(b) and (c)]

- CO-OPERATION, CONFLICT AND DISPUTE RESOLUTION UNDER THE BUILDING CODE ACT - Page 4

EXERCISE # 1 OFFENCES OF OBSTRUCTION AGAINST PERSONS HAVING JURISDICTION

Answer the following questions without looking back at the material in the module; refer only to the Building Code Act and support your answers with references.

 Consider a person having jurisdiction who needs to enter a room or place actually being used as a dwelling, to exercise a power or duty under the BCA, where the consent of the occupier was denied. Name the four circumstances when such denial of access to a dwelling would be considered an hindrance or obstruction under Subsection 19.-(1) of the BCA.

Denial of access to a room or place actually used as a dwelling, to a person having jurisdiction, in the exercise of a power or duty under the BCA, would create the offence of hindering or obstructing when:

a)

OR		S:		
BCA	A references	s:		
c) -				
BCA OR d) _				
-				
-				
-				
BCA	A Reference	ie.		

Module Nine

- CO-OPERATION, CONFLICT AND DISPUTE RESOLUTION UNDER THE BUILDING CODE ACT - Page 5

 Not considering Subsection 19.-(2) and the situations in Question 1, list four (4) conditions, along with the BCA references, considered as creating a hindrance or obstruction offence to a person having jurisdiction in the performance of his/her duties under the BCA:

In the exercise of a power or duty under the BCA by a person having jurisdiction, the following four actions create the offence of hindrance or obstruction:

BCA Reference	206:			
3	CA Reference	CA References:	CA References:	CA References: CA References:

The Ontario Trial Court System

The Province of Ontario is responsible for the administration of justice through the operation of the Ontario Court System.

You should be aware that, aside from the Courts, there are other law review bodies such as statutory tribunals, commissions and boards.

Because of the requirement for specialized knowledge by the adjudicator and so as not to clog up the Courts, these other law review bodies are created by provincial legislation to deal with specific issues. Prime examples under the BCA are:

 The Building Code Commission which is empowered to resolve disputes regarding the technical requirements of the Ontario Building Code and to make determinations whether prescribed times were respected.

[BCA Clauses 24.-(1)(a), (b) and (c)]

 The Licence Appeal Tribunal which is authorized to hear appeals from decisions of the Director of the Building and Development Branch <u>NOT</u> to register or renew a registration or to suspend or revoke a registration of a:

Designer engaged in the business of providing design activities to the public,

[Div. C, Sentences 3.2.4.9.(3) to (9)]

OR

Person engaged in the business of constructing on site, installing, repairing, servicing, cleaning or emptying sewage systems,

[Div. C, Sentences 3.3.3.9.(3) to (9)]

OR

Registered Code Agency.

[Div. C, Sentences 3.4.3.9.(3) to (11)]

On April 19, 1999, pursuant to Part IV of the *Courts Improvement Act*, 1996, the Ontario Court (Provincial Division) was renamed the <u>Ontario Court of Justice</u>. The Ontario Court (General Division) was renamed the <u>Superior Court of Justice</u>. The role of each court did not change.

We will now look at the role of each court, for the purposes of the Building Code Act.

The Ontario Court of Justice

The functions of this court are divided into six (6) main categories. The Provincial Offences Court, a Court within the Ontario Court of Justice, hears only trials of offences violating provincial statutes, regulations or municipal by-laws. In our case, the offences are identified in Section 36 of the BCA. It is presided by a Justice of the Peace or a Judge, appointed by the Province of Ontario.

The Superior Court of Justice

This Court will hear trials of criminal offences and in the case of the *Building Code Act*, it is empowered to hear appeals by aggrieved persons under Section 25 and applications of Chief Building Officials for restraining orders under Section 38 of the BCA. It is presided by a Justice, formerly called a Judge, appointed by the Federal Government. Within the Ontario Superior Court of Justice is the Divisional Court where three Justices hear appeals from decisions made by a Justice of the Superior Court of Justice. In the case of the *Building Code Act*, the Divisional Court is empowered to hear further appeals under Section 26 and Subsection 38.-(3) of the BCA.

The Ontario Court of Appeal

The Ontario Court of Appeal is Ontario's highest court and has been retained as a separate court, without name change. It does not try cases, it is solely an appeal court from decisions made by the Ontario Court of Justice and the Superior Court of Justice by way of the Divisional Court.

The Supreme Court of Canada

Appeals from decisions of the Ontario Court of Appeal are made to the Supreme Court of Canada, the final interpreter of all Canadian law, whatever its source.

- CO-OPERATION, CONFLICT AND DISPUTE RESOLUTION UNDER THE BUILDING CODE ACT - Page 8

You will not be tested on the hierarchy of the Ontario Trial Court System. Nonetheless, the information is within the need to know basis.



BCA - DISPUTE RESOLUTION MECHANISMS

There are a number of dispute resolution mechanisms within the BCA; the use of which depends on the nature of the dispute.

One option authorizes the referral of drawings to either the Professional Engineers of Ontario (PEO) or the Ontario Association of Architects (OAA) by the CBO to determine if the *Professional Engineers Act* or the *Architects Act* is being contravened. Similarly, the referral can be initiated by the request of either Association to the CBO.

Another mechanism empowers the Chief Building Official to review and amend or rescind an order made by an Inspector.

Where a dispute arises between an applicant for a permit, a person to whom a permit has been issued or a person to whom an order is given and a person having jurisdiction, either party may request a hearing by the BCC to resolve the dispute.

When a person feels aggrieved by an order or decision made by a person having jurisdiction, the aggrieved person may appeal the decision or order to the Ontario Superior Court of Justice whose decision may in turn be appealed to the Divisional Court.

If a person fails to comply with the Building Code Act, the building code or an order made under the BCA, an application may be made by a CBO to the Superior Court of Justice for a Restraining Order directing that person to comply with the provisions.

In the next part of this module, we will analyse each appeal mechanism under the *Building Code Act*.

Referral of Drawings, Plans and Specifications to PEO and OAA

- a) If the CBO or RCA having jurisdiction has reasonable grounds, he/she may refer drawings, plans, specifications and general review reports to the Association of Professional Engineers of Ontario (PEO) or the Ontario Association of Architects (OAA) to determine if the Professional Engineers Act or the Architects Act is being contravened. [BCA Subsection 8.-(9)]
- b) Conversely, if requested by PEO or OAA, the CBO must refer the drawings, plans, specifications and general review reports to the requesting association to determine if the Professional Engineers Act or the Architects Act, as the case may be, is being contravened. [BCA Subsection 8.-(9.1)]

2. Review of Orders by the CBO

- a) Any order written by an Inspector may be reviewed and changed or withdrawn by the Chief Building Official. It is important to note that this right does <u>NOT</u> extend to an order made by an RCA. It is realized that it is not the role of the CBO to overview or second guess the decisions of a duly appointed RCA; unless the next situation applies. [BCA Subsection 22.-(1)]
- b) The one and very important exception to what was established in 2. a) above, deals with a Stop Work Order and the associated OTC under Section 12, ONTCOE or OTU under Section 13. In this particular case, after the referral is made in accordance to Div. C, Subsection 3.7.7. the CBO is empowered to review and amend or rescind the Stop Work Order and any order [OTC, ONTCOE or OTU] that has been made by a Registered Code Agency in respect of the matter.

[BCA Subsection 14.-(8)]

- CO-OPERATION, CONFLICT AND DISPUTE RESOLUTION UNDER THE BUILDING CODE ACT - Page 10

3. Ruling by the BCC to resolve a dispute or make a determination

Any party involved in a dispute may apply to the BCC for a resolution. A person having jurisdiction, permit applicant, permit holder or person who has been issued an order may start the proceedings.

[BCA Subsection 24.-(1.1)]

- a) The BCC has the authority to hear and rule on a dispute between a permit applicant, a permit holder or a person to whom an order has been given and the person having jurisdiction, regarding the sufficiency of compliance with a technical requirement of the OBC. [BCA Clause 24.-(1)(a)]
- b) The BCC also has the authority to hear a dispute between a permit applicant and a CBO as to whether the CBO followed the requirements concerning the time limitations for deciding to issue or refuse a permit and for providing the list of reasons for not issuing the permit when that is the case.

[BCA Clause 24.-(1)(b)]

c) Authority is also granted to the Building Code Commission to hear disputes between permit holders and a person having jurisdiction as to whether the prescribed inspections have been conducted within the time frames prescribed in the OBC.

[BCA Clause 24.-(1)(c)]

It is important to remember that the BCC;

- has the power to substitute its opinon for that of the person having jurisdiction, [BCA Subsection 24.-(3)],
- 2- may require the person having jurisdiction to comply with applicable provision of the Act, and [BCA Subsection 24.-(3.1)]
- 3- decision is final and binding on both parties. [BCA Subsection 24.-(4)]

4. Appeal to the Superior Court of Justice

a) A person who feels aggrieved by an order OR by a decision made by a person having jurisdiction has 20 days after the order or decision is made to launch an appeal to the Superior Court of Justice.

[BCA Subsection 25.-(1)]

The only issue which is NOT subject to an appeal is the decision of a CBO to NOT issue a conditional permit. [BCA Subsection 25.-(1)]

b) The decision rendered by the Superior Court of Justice is subject to an appeal to the Divisional Court. [BCA Subsection 26.-(1)]

5. Authority of the Superior Court of Justice to make a Restraining Order upon the application of a CBO

- a) Where a CBO has reason to believe that a person has not complied with the Building Code Act, the building code or an order, despite the imposition of a penalty by the Ontario Court of Justice in respect of the non-compliance and in addition to any other rights the person may have, the CBO may apply to the Superior Court of Justice for a Restraining Order directing that person to comply with the provisions. [BCA Subsection 38.-(1)]
- b) The "Restraining Order" made by a Justice of the Ontario Superior Court of Justice, under Subsection 38.-(1) of the BCA, is subject to an appeal to the Divisional Court. [BCA Subsection 38.-(3)]

6. Authority of the Ontario Court of Justice to make a Restraining Order During Trial

If a CBO or Inspector has initiated proceedings under Part I or III of the *Provincial Offences Act*, and a conviction is entered, in addition to any other remedy and any penalty imposed by the BCA, the court may make an order prohibiting the continuation or repetition of the offence by the person convicted.

[BCA Subsection 36.-(7)]

For example, the lawyer representing the CBO or Inspector could ask for a "Restraining Order" under Subsection 36.(7) of the BCA at the time of submission for sentencing when dealing with a person that has had multiple previous convictions for failure to comply with an Order or building without a permit. If the "Restraining Order" is not requested prior to the conviction, at a later date, the CBO will have to make an application under the provisions of Section 38 of the BCA.

7. Binding Interpretation by the Minister of Municipal Affairs and Housing

Since July 1, 2005 the Minister has the authority to issue a written interpretation of any provision of the Ontario Building Code which is binding on any person it may affect.

[BCA Subsection 28.1-(1)]

EXERCISE #2 - DISPUTE RESOLUTION MATRIX

This exercise is meant to reinforce what you have learned about the Dispute Resolution Process contained in the Building Code Act as well as to provide you with a summary and job aid for this topic. Deal with the questions in the usual manner.

1. Fill in the blanks within the matrix on the next page.

DISPUTE RESOLUTION MATRIX					
	CONDITION	PERSONS HAVING AUTHORITY TO INITIATE PROCESS	PERSONS AFFECTED	RESOLUTION	BCA Reference
-	referral of drawings	CBO, RCA	Designer	PEO, OAA	
-	referral of drawings		Designer and CBO	PEO, OAA	8(9.1)
	review/amend/rescind an inspector's order	Recipient of Order and Inspector	Inspector		
-	amend or rescind a SWO and any order made by an RCA in respect of the matter		RCA and Recipient of Orders		14(8)
	authority to decide on a dispute concerning the sufficiency of compliance with a technical requirement of the OBC filed under Subsection 24(1.1)	Permit Applicant, Permit Holder, or Person to whom order is given, CBO, Inspector or RCA 24(1.1)	Permit Applicant, Permit Holder Person to whom an order is given, CBO, Inspector or RCA	see Notes 1. and 3.	
-	authority to decide if permit was issued in prescribed time and whether the reasons were given when the permit is refused	Permit Applicant or Permit Holder	Permit Applicant, Permit Holder and CBO	BCC see Notes 2. and 3.	
-	authority to determine whether prescribed inspections were done in prescribed time	Permit Holder	CBO, Inspector, or RCA	see Notes 2.	

NOTES:

- 1. The BCC may substitute its opinion for that of the CBO, Inspector or RCA [Subsection 24.-(3)]
- 2. The BCC may require the CBO, Inspector or RCA to comply with specific parts of the BCA [Subsection 24.-(3.1)]
- 3. The decision of the BCC is final [Subsection 24.-(4)].

- CO-OPERATION, CONFLICT AND DISPUTE RESOLUTION UNDER THE BUILDING CODE ACT - Page 14

R	THE BUILDING CODE ACT -	Page 14
2.	A person who wishes to appeal a decision person having jurisdiction to the Superior Courmust do so within;	
	a) 20 days after the decision has been render	ed
	b) 30 days after the decision has been render	ed
	c) one month after the decision has been rend	dered
	d) four weeks after the decision has been rene	dered
	BCA Reference:	
3.	Under the BCA, the <u>only</u> issue which is <u>NOT</u> appeal to the Ontario Superior Court of Jus decision of the Chief Building Official to;	
	a) issue a Stop Work Order	
	b) refuse to issue a Conditional Permit	
	c) appoint an RCA	
	d) refuse to review an order made by an Inspe	ector
	BCA Reference:	
4.	The decision made by the Superior Court of subject to an appeal to the;	f Justice is
	a) Building Code Commission	
	b) Chief Building Official	
	c) Principal Authority	
	d) Divisional Court	

BCA Reference: _____

Facilitator / Self-Study
Participant Note: The
authority of an Inspector
may be exercised by a CBO
as provided by Subsection
22.-(2) of the BCA or a
Person authorized by a
RCA by way of Subsection
15.17-(3). The person
having jurisdiction my be a
CBO, Inspector, RCA or
Person authorized by a
RCA, as the case may be.

EXERCISE # 3 REVIEW OF MODULE NINE

1.	in the performance of his/her duties under the BCA. [BCA Subsection 19(1) and Clauses 36(1)(b) and (c)]
	Examples of actions considered as obstructing or hindering: - refusal of entry into a dwelling unit with a warrant [BCA Subsection 19(2) and Clauses 36(1)(b) and (c)]
	- failure to assist a person having jurisdiction [BCA Subsection 19(3) and Clauses 36(1)(b) and (c)]
	- refusal to produce a document, drawing, specification or other item requested by a person having jurisdiction under Clause 18(1)(a) [BCA Clauses 19(4)(a), 36(1)(b) and (c)]
	- refusal to provide information, requested by a person having jurisdiction under Clause 18(1)(c), concerning a matter related to a building or part thereof. [BCA Clauses 19(4)(b) and 36(1)(b) and (c)]
_	

4.	Dispute Resolution Mechanisms: - the Chief Building Official may review, amend, or rescind an order made by an Inspector
3.	It is an offence to fail to cooperate with a person having jurisdiction or to fail to comply with an order, direction or other requirement made under the <i>Building Code Act</i> . [BCA Subsection 19(3) and Clauses 36.(1)(b) and (c)]
2.	If a place is being used as a dwelling, it is not considered an obstruction to refuse entry to a person having jurisdiction that is without a warrant. [BCA Subsection 19(2)]

_	- the Chief Building Official or RCA having jurisdiction may refer drawings, plans or specifications or general review reports to the Professional Engineers of Ontario or the Ontario Association of Architects or the Associations may request them from the CBO to determine if the <i>Professional Engineers Act</i> or the <i>Architects Act</i> is being contravened. [BCA Subsections 8(9) and (9.1)]
	- the Building Code Commission is empowered to settle disputes between a person having jurisdiction and an applicant for a permit, a holder of a permit or a person to whom an order was given, concerning: -the sufficiency of compliance with the technical requirements of the OBC [BCA Clause 24(1)(a)]
_	-whether the CBO determined within the time prescribed in Div. C, Article 1.3.1.3. whether to issue the permit under Section 8 of the BCA or refuse to issue it [BCA Clause 24(1)(b)]
	-whether the CBO informed the applicant of all the reasons for the refusal of the permit within the time prescribed in Div. C, Article 1.3.1.3. in the case where the CBO refuses to issue a permit under Section 8 of the BCA [BCA Clause 24(1)(b)]
_	

Module Nine

-whether the person having jurisdiction, carried out the prescribed inspections within the time prescribed in Div C, Article 1.3.5.3. [BCA Clause 24(1)(c)]
-appeal, by an aggrieved person, of an order or decision made by a person having jurisdiction, to the Superior Cour of Justice [BCA Subsection 25(1)]
- further appeal of decision of the Superior Court of Justice to the Divisional Court [BCA Subsection 26(1)]
 5. Application for a "Restraining Order" in the Ontario Court of Justice during the trial for a offence, [BCA Subsection 36(7)]
- by the CBO to the Superior Court of Justice [BCA Section 38]



MODULE TEN - OFFENCES, LIABILITY AND IMMUNITY FROM ACTIONS

Facilitator / Self-Study Participant Note: FINES under Subsections 36.-(3) and (4) of the BCA WERE DOUBLED by the Law Enforcement and Forfeited Property Management Statute Law Amendment Act, 2005 S. O. 2005, c. 33.

INTRODUCTION

The Building Code Act recognizes that along with the duties and powers which are required to be performed by various persons having jurisdiction, there must also be some mechanisms to provide a certain degree of protection against legal actions in the performance of these mandated duties done in good faith. This is especially true when dealing with the potential problems inherent with exercising emergency powers, under the authority of an Emergency Order under Section 15.10-(3) of the BCA, to terminate an immediate danger to the health or safety of any person.

In this module we will investigate those mechanisms as well as the range of offences and penalties under the BCA.

OBJECTIVES

After completion of this module, you will:

- * recognize the conditions related to immunity from legal action
- * describe the conditions of liability
- discuss the possibility of legal action arising out of the issuance of an Emergency Order
- * list the various offences under the Building Code Act
- ★ determine the penalties for offences under the Building Code Act
- ★ recognize the power of the Court in regards to continuing or repetitious offences and restraining orders.

RELEVANT BCA REFERENCES:

The areas within the *Building Code Act* which deal with the topics of this module are found in:

General

 Section 31 "Immunity from Action", "Liability" and Immunity re Registered Code Agencies"

Unsafe Buildings

Section 15.10 "Emergency Order to terminate an immediate danger"

General

- Section 36 "Offences under the BCA"

IMMUNITY FROM ACTION

PROCEEDING FOR DAMAGES

The *Building Code Act* is very clear in stating that <u>no</u> action or other <u>proceedings for damages</u> may be started against:

- the Director of the Building and Development Branch,
- a member of the Building Code Commission,
- a member of the Building Materials Evaluation Commission,
- anyone acting under the authority of either a commission or the director,
- a person conducting an inquiry for the Minister,
- a Chief Building Official, or
- an Inspector

for anything they may have done in fulfilling their duties under the *Building Code Act* or the building code <u>as long as those actions</u> were done in good faith.

[BCA Subsection 31.-(1)]

Facilitator / Self-Study Participant Note: In case of a litigation, it is up to the prosecution to prove that a prescribed person (person having jurisdiction) did not act in good faith [BCA Subsection 31.-(1). This is often difficult to prove but you should always keep this in the back of your mind and be careful of your actions, just in case.

PROCEEDING FOR NEGLIGENCE

The BCA goes even further to state that actions cannot be started against any of these prescribed individuals on the basis of alleged negligence or not performing a duty or applying a particular power as long as, once again, the failure to perform was in good faith.

[BCA Subsection 31.-(1)]

Facilitator / Self-Study Participant Note: From the Carswell Dictionary of Canadian Law TORT n. 1. Wrong. 2. Generally, an injury other than a breach of contract for which recovery of damages is permitted by the law.

3. Intended to restore the injured person to the position he enjoyed prior to the injury, rather than to punish the tortfeasor whose only wrong may have been a moment of inadvertence.

4. A fundamental proposition underlies the law of tort: that a person who by his or her fault causes damage to another may be held responsible.

Injury n. The broadest acceptable sense of the word 'injury' is 'interference with a right'

LIABILITY OF PRINCIPAL AUTHORITY FOR A TORT COMMITTED BY ONE OF ITS EMPLOYEE

While the Director of the Building and Development Branch, a member of the Building Code Commission or the Building Materials Evaluation Commission or anyone acting under the authority of either a commission or the director, a person conducting an inquiry for the Minister, a Chief Building Official, or an Inspector is immune for any act done in good faith, Subsection 31.-(2) of the Building Code Act informs us that the Principal Authority is liable for a tort committed by one of its employees as if Subsection 31.-(1) did not exist.

[BCA Subsection 31.-(2)]

PROCEEDING FOR ACTIONS/OMISSIONS OF AN RCA

Furthermore, the Building Code Act states that when a Registered Code Agency is properly authorized and performing the functions an RCA is permitted to perform, the following are **not** liable nor responsible for any negative outcome due to the actions or omissions of the RCA:

- The Crown, (Government of Ontario and its agencies)
- a municipality,
- an upper-tier municipality,
- a board of health,
- a planning board, or
- a conservation authority. [BCA Subsection 31.-(3)]

PROCEEDING FOR HARM/DAMAGES FOR EXERCISING DUTY

To tie up any loose ends, the *Building Code Act* goes on to state that the:

- Crown,
- municipality,
- upper-tier municipality,
- board of health,
- planning board or
- conservation authority

is also <u>not</u> liable for any harm or damages caused by any act or omission in performing a duty or exercising a power under the *Building Code Act* by their respective Chief Building Official or an Inspector **IF** that act or lack of action was due to the REASONABLE RELIANCE on a certificate or other information provided by an appointed RCA or one of it's employees.

[BCA Subsection 31.-(4)]

PROCEEDING FOR COMPENSATION DUE TO AN EMERGENCY ORDER

In the case of Emergency Orders, which the CBO is empowered to make if a dangerous condition poses an immediate danger to the health or safety of any person, neither the CBO, Inspectors or their agents nor the Principal Authority are liable for compensation to the owner, occupant or anyone else for work done <u>in the reasonable exercise of power</u> under an Emergency Order. The one proviso is, of course as always, as long as the EO was made and the remedial work was done in good faith. Remember the a Judge must confirm the EO under Clause 15.10-(8)(a).

[BCA Subsection 15.10-(4)]

The material of this course is intended to assist the CBO and RCA in adopting and managing procedures which will provide a level of service that will provide safety for the occupants of buildings and protection from the risks of liability.

BCA LIABILITY "WRONG BUT NOT CARELESS"

In the October 1999 issue of the Journal, published by the Ontario Building Officials Association, Jeffrey Levitt, Senior Counsel for the Legal Services Branch of the Ministry of Municipal Affairs and Housing published an article entitled "BCA Liability "Wrong but not Careless" The complete article has been reproduced at the back of this Module. For your information and use, the conclusion of Mr. Levitt's article has been reproduced here.

"... in order to succeed in the causes of action of negligence or of negligent misrepresentation, a plaintiff must do more than establish negligence.

To succeed in a cause of action of negligence, the plaintiff must establish that: the plaintiff has suffered damage; the damage suffered must be caused by the conduct of the defendant; the defendant's conduct must be negligent (i.e., below the standard of care set by the law); there must be a duty of care recognised by the law to avoid this damage; the damage suffered by the plaintiff should not be too remote a result of the defendant's conduct; and, the conduct of the plaintiff should not be such as to bar recovery (i.e., contributory negligence and voluntary assumption of risk). Liability can, therefore, be avoided where it is established, for example, that the negligence of the building department did not cause the damage at issue.

<u>To succeed in a cause of action of negligent misrepresentation, the plaintiff must establish that</u>: a duty of care arises from the existence of a "special relationship" between the representor and the representee; the representation at issue must be untrue, inaccurate or misleading; the representor must have acted negligently in making the representation; the representee must have relied in a reasonable manner on the negligent misrepresentation; and, damage to the representee must have resulted from the reliance. ¹¹ Liability can, therefore, be avoided where it is established, for example, that the plaintiff did not reasonably rely on a municipality's negligent misrepresentation about the effect of the building code. ¹²"

Notes from Mr. Levitt's article

- Linden Canadian Tort Law (6th) at p. 99
- 10. See, for example, Davis v. Aurora (Town) unreported decision of Ontario Court (General Division), released May 14, 1993, which held that "... The damage in question to the upper area did not flow or arise from the breach by [the contractor] to rectify the defects in the gas barrier nor that of the Town to compel [the contractor] to do so; for even if an effective gas barrier was in place at the time of the fire, the damage would have occurred to the upper area of the dwelling in any event."
- 11. Queen v. Cognos Inc (1999) 99 DLR (4th) 626 at 643 (SCC)
- 12. See, for example, Beutel Goodman at para. 36, where the Court held that a purchaser of a building from a developer was unreasonable in relying on a negligent misrepresentation of the City that the National Building Code did not require certain barrier free access in the subject building, in view of the facts that the purchaser's own architect had alerted the purchaser to the possibility of an error in the City"s interpretation of the building code and the developer's responses to the architect's inquiries were unsatisfactory, yet the purchaser did not follow up the matter with the developer (who suggested that the purchaser discuss the matter with the City) or require the developer to take advantage of existing rights of appeal in respect of the City's interpretation.

This is not a formal exercise as you will not be tested on the subject matter but it is within the "need to know" category of information that will assist you in taking actions to avoid liability. In the space provided, make note of any comment, concern or question. During the course, these will be given consideration by the facilitator.

EXERCISE # 1- IMMUNITY FROM ACTION

Answer the following questions without looking back at the material in the module; refer only to the Building Code Act and provide the appropriate references.

- According to the Building Code Act which of the following persons does NOT enjoy immunity from action for any act done in good faith in the execution or intended execution of any power or duty under the Act?
 - a) Chief Building Official
 - b) Inspector
 - c) Director of the Building and Development Branch
 - d) Designer, Owner or Contractor

BCA Reference:			
Dort tolorono.			

- Where a tort is committed and a municipality had reasonably relied on a certificate issued or other information given by a properly appointed Registered Code Agency, the
 - a) Municipality is liable
 - b) Municipality is NOT liable
 - c) Registered Code Agency is NOT liable
 - d) Chief Building Official who relied on the certificate or other information is liable

DCA Reference.	BCA	Reference:		
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INC	rage c
3.	The following is responsible for damages caused by the action of a RCA or Person authorized by the RCA in the performance of any function set out in Section 15.15 of the BCA;
	a) Inspector
	b) Chief Building Official
	c) Municipality
	d) Registered Code Agency
	BCA Reference:
4.	Notwithstanding Subsection 31(1) of the <i>Building Code Act</i> , where a Chief Building Official or an Inspector acted in good faith in the execution of a power or duty but someone suffered an injury, in a law-suit the following could be held liable.
	a) municipality
	b) Chief Building Official
	c) Inspector
	d) Registered Code Agency
	BCA Reference:
5.	For the work done in the reasonable exercise of the powers of the Chief Building Official under an Emergency Order, the liability for damages lies with the;
	a) Chief Building Official
	b) municipality
	c) owner or occupant
	d) contractor who acted as an agent of the CBO

STOP

BCA Reference: _____

Facilitator/Self-Study Participant Note:

Knowingly according to Carswell's Pocket

Dictionary of Canadian Law: The general principle

of criminal law is that accompanying a prohibited

act there must be an intent in respect of every element

of the act, and that is ordinarily conveyed in

statutory offences by the word "knowingly". R. V.

Rees (1956), 24 C.R. 1 at 8, [1956] S.C.R. 640, 115

C.C.C. 1, 4 D.L.R. (2d) 406, Rand J. (Locke J.

concurring).

OFFENCES UNDER THE BUILDING CODE ACT

TYPES OF OFFENCES

A person is guilty of an offence if that person;

- a) knowingly provides false information for:
 - 1) any application
 - 2) any certificate, or
 - 3) any required statement or return

OR

- b) does not comply with a(n):
 - 1) order
 - 2) direction, or
 - 3) requirement of the Building Code Act

OR

- c) contravenes:
 - 1) the Building Code Act
 - 2) the building code
 - 3) an instrument enacted under Section 7 or
 - a condition imposed by the Chief Building Official or Registered Code Agent on the permission to use an equivalent material, system or building design. [BCA Subsection 36.-(1)]

Basically the offences deal with:

- a) knowingly providing false information,
- b) failing to comply with orders and the like, and
- c) contravening the laws.

This finding of guilt, in addition to being imposed on a person, is also passed onto a director or officer of a corporation who-knowingly concurs in the commission of any of the offences listed above.

[BCA Subsection 36.-(2)]

TIME LIMITATION FOR STARTING A PROCEEDING

It is important to keep in mind that a proceeding, under Part I or Part III of the *Provincial Offences Act*, for offences under the *Building Code Act* must be started **not more than 1 year** after the time "the subject-matter of the proceeding arose".

[BCA Subsection 36.-(8)]

This requires careful documentation in order to prevent the case from falling victim to the determination as to "when the clock started".

SUMMARY - TYPES OF OFFENCES

KNOWINGLY PROVIDING FALSE INFORMATION

- on applications
- in certificates
- in any required statement or return required to be furnished under the BCA or the OBC [BCA Clause 36.-(1)(a)]

NON-COMPLIANCE WITH

- an order
- a direction of the Building Code Act
- a requirement of the *Building Code Act* [BCA Clause 36.-(1)(b)]

NON-COMPLIANCE WITH

- the Building Code Act
- the building code
- an instrument enacted under Section 7 of the BCA
- a condition to the permission to use an equivalent material, system or building design [BCA Clause 36.-(1)(c)]

Facilitator/Self-Study
Participant Note: The
Carswell Dictionary of
Canadian Law defines a
"corporation" as follows, 1.
A legal entity distinct from
its shareholders or
members with liability
separate from its
shareholders or members
vested with the capacity of
continuous succession. 2.
A body corporate with or
without share capital.

EXERCISE #2 - OFFENCES UNDER THE BUILDING CODE ACT

- A person is guilty of an offence if the person;
 - a) knowingly provides false information
 - b) fails to attach the necessary schedules to an application
 - c) issues an incomplete certificate
 - d) provides plans that are not in compliance with the OBC

BCA Reference:		
DOM NOIGIGITO.	 	

- 2. A corporation building a high rise office building is guilty of an offence under the *Building Code Act* if it;
 - a) contravenes the Building Code Act
 - b) has outstanding fines that remain unpaid for more than six months
 - c) is NOT registered as a builder or vendor with the ONWHPA
 - d) is issued an Order to Comply

BCA Reference:		
20111010101001		

- Consult R. v. Pickles. The Building Code Act period within which proceedings, under the Provincial Offences Act, must be started, for the offence of constructing a building without a permit or causing a building to be constructed without a permit contrary to Subsection 8.-(1) of the BCA is;
 - a) not more than 1 year after the permit is issued
 - b) not more than 1 year after completion of the work
 - c) not more than 1 year after the time the matter came to light
 - d) not more than 1 year after the construction started

BCA RE	ference: .				
201110	10101100.	 	 	 	_



PENALTIES FOR BCA OFFENCES

The Building Code Act sets the maximum limits of the fines that may be imposed on conviction for a first and subsequent offences.

CONVICTED	1st OFFENCE	SUBSEQUENT OFFENCE*	BCA
	(max.)	(max.)	
**Person	\$50,000	\$100,000	36(3)
Corporation	\$100,000	\$200,000	36(4)

- * A subsequent offence is defined as an offence in which there has been a previous conviction under the *Building Code Act*. [BCA Subsection 36.-(5)]
- ** The officer or director of a corporation in Subsection 36.-(2) would be treated as a person under Subsection 36.-(3).

The concept of fines does not end at a conviction for an offence. The *Building Code Act* recognizes that an offence may constitute a continuing offence. As such, the BCA states that <u>every person</u> who fails to comply with a Stop Work Order or an Order Prohibiting the Use or Occupancy of an Unsafe Building, made by a Chief Building Official, may upon conviction be fined not more than \$10,000 per day the offence continues past the date stated in the order.

This daily fine for a continuing offence is in **addition to the fines imposed** in Subsections 36.-(3) and (4). [BCA Subsection 36.-(6)]

If the *Building Code Act* or the building code is contravened and a conviction is entered, in addition to any of the penalties listed in Section 36, any court may issue an order prohibiting the continuation or repetition of the offence (ie, issue a Restraining Order).

[BCA Subsection 36.-(7)]

Facilitator/Self-Study
Participant Note: Failure
to comply with a Court
issued Restraining Order
places the offender in
contempt of Court and such
person potentially faces
some harsh penalties.

EXERCISE #3 - PENALTIES FOR BCA OFFENCES

1.	Construction Company Limited failed to comply with an Order
	to Comply and a guilty conviction was determined in court. As
	this was the first conviction, the corporation may be fined;

- a) \$200,000 max.
- b) \$50,000 max.
- c) \$100,000 max.
- d) \$50,000 max. + \$10,000 max. / day

BCA	Reference:			
	I VOICIOITOC.			

- The Construction Company Limited was issued another Order to Comply for the same infraction and once again a guilty conviction was determined in court. It may be fined;
 - a) \$100,000 max.
 - b) \$50,000 max.
 - c) \$200,000 max.
 - d) \$200,000 max. + \$10,000 max. / day

BCA	Reference:	

- The CBO was exasperated and issued a Stop Work Order to Construction Company Limited, which ignored the SWO. In addition to the previous penalties identified in 1 and 2 above, the corporation is now subject to:
 - a) \$50,000 max. fine
 - b) \$50,000 max. fine + \$10,000 max. / day the offence continues
 - \$50,000 max. fine + \$10,000 max. / day the offence continues + a Restraining Order
 - d) \$10,000 max. / day the offence continues + a Restraining Order

BCA	References:			
0011	1 (0101011000			

- 4. A person is building an addition to his/her house and is issued an Order to Comply. The person fails to comply and is subsequently convicted in court. This is this person's first offence. This individual may be fined;
 - a) \$200,000 max.
 - b) \$50,000 max.
 - c) \$100,000 max.
 - d) \$10,000 max. / day the offence continues

RCA	Reference:	
DUC	Neichende.	

- The same homeowner is again given another Order to Comply for a different matter and a guilty conviction is determined in court. Under Section 36 of the BCA, this person is subject to:
 - a) \$200,000 max. fine
 - b) \$100,000 max. fine
 - c) \$100,000 max. fine + \$10,000 max. / day the offence continues
 - d) \$100,000 max. fine + a Restraining Order

BCA	References:			

STOP

EXERCISE # 4- REVIEW OF MODULE TEN

	For the execution of a power or duty done in good faith under the BCA no action or proceedings can be instituted against;
	- the Director of the Building and Development Branch,
	- a BCC member,
	- a BMEC member,
	- anyone acting under authority of the BCC / BMEC,
	- a person conducting a ministerial inquiry,
	- a Chief Building Official, or
	- an Inspector. [BCA Subsection 31(1)]
2.	The Principal Authority is liable for a tort committed by one of its employees, as if Subsection 31(1) did not exist. [BCA Subsection 31(2)]

from the reasonable reliance by its Chief Building Official or an Inspector on a certificate or other information provided by an RCA. [BCA Subsection 31(4)]
For the reasonable exercise of the powers of a Chief Building Official after an Emergency order is made, there is no liability owed to the owner, occupant or any other person. [BCA Subsection 15.10-(4)]
Offences under the Building Code Act. A person is guilty if; - they knowingly provide false information in an application, certificate or required statement, [BCA Clause 36(1)(a)] - they do not comply with an order, direction or requirement in the Act, [BCA Clause 36(1)(b)] - they do not comply with the Building Code Act, the building code, an instrument enacted under Section 7 or a condition imposed on an equivalent. [BCA Clause 36(1)(c)]
The director(s) and officer(s) of a corporation may also be found guilty for knowingly concurring with the commission of an offence by their employees. [BCA Subsection 36(2)]

o.	ma	ere is a time limit of 1 year starting at the time "the subject atter of the proceedings arose" in which to commence a oceeding under the <i>Provincial Offences Act</i> . CA Subsection 36(8) and R. v. Pickles]
9.	Pe	nalties for offences under the BCA:
	a)	individual persons - \$50,000 max. for a first offence \$100,000 max. for a subsequent offence [BCA Subsection 36(3)]
	b)	corporations -\$100,000 max. for a first offence \$200,000 max. for a subsequent offence [BCA Subsection 36(4)]
	c)	for individual persons and corporations, a max. fine of \$10,000 / day for a continuing violation of a Stop Work Order or an Order Prohibiting the Use or Occupancy of an Unsafe Building [BCA Subsection 36(6)]

- d) a Court issued Restraining Order may be imposed on an offender, prohibiting the continuation or repetition of the offence by the offender:
 (i) at trial by the Ontario Court of Justice
 - (i) at trial by the Ontario Court of Justice [BCA Subsection 36.-(7)]
 - (ii) by the Superior Court of Justice on application by the CBO [BCA Subsection 38.-(1) and(2)]

STOP



Legal Services Branch

When considering a municipality's liability in negligence for errors and omissions of building officials in the course of their enforcement of the Building Code Act, 1992 ("BCA"), it must be remembered that liability in negligence

requires, among other things (see below), not only that the building official has made an error, but also that this error was he result of carelessness (i.e., negligence).

Courts have recognised situations where a building official has failed to detect noncompliance with building regulations in the course of carrying out plans approval or inspection functions or has made an incorrect representation (i.e., about compliance with a zoning by-law), yet where the building official has nonetheless met the standard of care required in the circumstances (i.e., has not been negligent). In other words, courts have recognised situations where a building official may have been wrong, but was not careless. In this event, the courts have held that the municipality is not liable in negligence for the consequences of the building official's conduct.

Action/Inaction of Municipality

When considering the standard of care building officials must achieve in the course of enforcement of building regulations, courts often quote the following statement of Justice La Forest of the Supreme Court of Canada in the case of Rothfield v. Manolakos Z.

It must be borne in mind that a municipality ...is not bound to discover every latent defect in a given project, nor every derogation from applicable standards. That would be to hold the municipality to an impossible standard. Rather a municipality is only called upon to show reasonable care in the exercise of its powers of inspection. Accordingly, a municipality ...will only incur liability for such defects as it could reasonably be expected to have detected and to have ordered remedied...

It follows from this judgement that there may be instances of non-compliance with building regulations which the building official could not reasonably be expected to have detected and to have ordered remedied, and that the municipality will not be liable in negligence for failing to detect such defects. As a result, the fact that a building official may have failed to detect a particular instance of non-compliance with the Ontario Building Code in the course of BCA enforcement does not end the matter of liability; consideration must also be given to whether the failure to detect the defect was a result of carelessness (i.e., negligence) by the building official.

This principal is illustrated by a recent court case3, which noted that a building department may make an incorrect interpretation of the building code, yet still not be negligent:

...a municipality is not required to discover every latent defect nor every derogation from applicable standards. It follows that a municipality is not required to interpret the National Building Code perfectly. Thus, the mere misinterpretation of the National Building Code perfectly. Thus, the mere misinterpretation of the National Building Code is not, of itself, necessarily negligence...

It is necessary to inquire whether the City acted ...with reasonable care.

A recent example of non-compliance with building regulations which a court held that building officials could not reasonably be expected to have detected and to have ordered remedied was a deficiency in the structural design (the shear stress at the interior columns) of a nine story addition to a hotel. The judge found that the defect was not obvious on the face of the plans (it took engineering consultants hundreds of hours of analysis to identify the

esign source of the defect) and that it was reasonable for the ailding officials to rely on the owner's engineer to verify ompleteness of this aspect of the structural design of the ailding. Unlike the situation in the Rothfield case, the judge left it would not have been reasonable to expect the building epartment to have detected this particular derogation from ailding standards:

The court [in the Rothfield case] ...found that due sercise by the inspector of the powers at his disposal ould have avoided the danger. In the [present case], the vidence demonstrated the opposite - essentially, that ructural failures are rare and no prudent or reasonably ompetent person could have detected the structural efects hidden within the design of the superstructure.' The Judge therefore found that the building officials office to detect the design defect in its plans review or espection activities was not negligent, and the building lightly was accordingly held not to be liable in egligence.

Representations by Municipality

The courts have likewise held that it is possible for unicipal officials to be wrong, but not careless, when aking representations and thus not to be liable in negligent presentation:

..no action would lie for negligence because there was no illure to exercise care or skill.

...It is one thing to say that municipal officers must be areful and skilful and reasonably competent, and that if ney may be liable in negligence. It is another thing to say not they must be right in their representations or they and neir municipality will both be liable to compensate anyone tho suffers loss by acting on an incorrect representation. In the latter case the municipal officers become insurers not the building projects in their municipalities will not be areatened by zerong or building codes or whatever else the epresentation concerns.'

As a result, the fact that a municipal official may have made n incorrect representation does not end the matter of liability; onsideration must also be given to whether the municipal official was negligent in making representation. An Ontario judge stated this principle as follows:

I find that the statements made by [the municipality's planners] were incorrect. However...this finding does not dispose of the matter...[as] it is not enough for the statement to have been wrong, it must also have been made negligently...

The case law provides examples of representations by municipal officials that may have been incorrect, but were nonetheless held not to have been carelessly made:

City staff's interpretation of By-law 7666 was erroncous, but it was not borne of negligence. City staff's interpretation of the M2-15 zoning was an honest misinterpretation, arrived at without any malfeasance.'

...The evidence presented does not establish that the building inspector was negligent in overlooking any provisions of the Town by-laws ...Even if one could conclude that he misinterpreted the provisions of the Zoning Bylaw, the evidence does not substantiate that he did not exercise the care and skill of a reasonable and conscientious person."

Other Requirements for Liability

As noted above, in order to succeed in the causes of action of negligence or of negligent misrepresentation, a plaintiff must do more than establish negligence.

To succeed in a cause of action of negligence, the plaintiff must establish that: the plaintiff has suffered damage; the damage suffered must be caused by the conduct of the defendant; the defendant's conduct must be negligent (i.e., below the standard of care set by the law); there must be a duty of care recognised by the law to avoid this damage; the damage suffered by the plaintiff should not be too remote a result of the defendant's conduct; and, the conduct of the plaintiff should not be such as to bar recovery (i.e., contributory negligence and voluntary assumption of risk). Liability can, therefore, be avoided where it is established, for example, that

the negligence of the building department did not cause the damage at issue."

To succeed in a cause of action of negligent misrepresentation, the plaintiff must establish that: a duty of care arises from the existence of a "special relationship" between the representor and the representee; the representation at issue must be untrue, inaccurate or misleading; the representor must have acted negligently in making the representation; the representee must have relied in a reasonable manner on the negligent misrepresentation; and, damage to the representee must have resulted from the reliance." Liability can, therefore, be avoided where it is established, for example, that the plaintiff did not reasonably rely on a municipality's negligent misrepresentation about the effect of the building code."

Jeff Levitt

Senior Counsel

Note:

- 1. This article is intended to convey general information rather than legal advice about the matters discussed herein. Readers requiring legal advice about these matters should consult their solicitors.
- 2 (1989) 63 DLR (4th) 449 and 455 (SCC)
- 3. Beutel Goodman Real eState Group Inc. v. Halifax (City) [1998] NSJ 302 at para 22, 23 (NSSC).
- 4. Hilton Canada Inc. v. Magil Construction Ltd. (1998) 47 MPLR (2d) 182 at 215 (OC(GD))
- 5. Inland Feeders Ltd. v. Virdi (1981) 129 DLR (3d) 684 at 690, 691 (BCCA)
- 6. Bell v. Samia (City) (1987) 59 OR (2d) 123 at 131 (OHC)
- 7 Dejai Holdings Ltd. v. Guelph (City) [1998] OJ NO. 178 at para. 91 (OC(GD)) affirmed [1999] OJ No. 1434 (OCA)
- 8. Charlebois v. Greater Moncton Planning District Commission [1994] NBJ No. 38 at para. 43 (NBQB).
- 2. Linden Canadian Torr Law (6th) at p.99
- 11. Queen v. Cognos Inc. (1993) 99 DLR (4th) 626 at 643 (SCC)
- 2. See, for example, Beutel Goodman at para, 36, where the Court held that a purchaser of a building from a developer was unreasonable in relying on a negligent instruperesentation of the City that the National Building Code did not require certain barrier free access in the subject building, in view of the facts that the purchaser's own architect had alerted the purchaser to the possibility of an error in the City's interpretation of the building code and the developer's responses to the architect's inquiries were unsatisfactory, yet the purchaser did not follow up the matter with the developer (who suggested that the purchaser discuss the matter with the City) or require the developer to take advantage of existing rights of appeal in respect of the City's interpretation.

MODULE ELEVEN - CHANGE OF USE AND RENOVATIONS

INTRODUCTION

The Ontario Building Code provides that when the occupancy of a building, or part of a building changes, the suite or the building with the new end-use may require up-grading to offset the inherent reduction in performance level imparted by the proposed change of use to the existing structure. Div. B. Part 10 entitled "Change of Use" deals specifically with this situation.

[Div. A, Article 1.1.2.5.]

Part 11, "Renovation" offers guidance for construction, where a building has been in existence for at least five years, whether or not there is a change of use.

[Div. A, Article 1.1.2.6.]

As you will see, Parts 10 and 11 of Division B have similar requirements in the case of a change of use.

Div. B, Parts 3 (new construction), 9 (new construction), 10 (change of use without construction) and 11 (renovation) have the same requirements for the prohibition of occupancy combinations. [Div. B, Articles 3.1.3.2. and 9.10.9.12. and Sentences 10.3.2.2.(10) and 11.2.1.3.(1)]

OBJECTIVES

When you have completed this module you will be able to:

- ★ determine when Part 10 of Division B is applicable.
- define what constitutes a change of use,
- establish the performance level of an existing building,
- determine what offsetting measures and additional upgrades may be required where there is a reduction in the performance level.
- calculate the construction and hazard indices for a building.
- evaluate Performance Levels and Compensating Construction, and
- explain Compensating Construction and differentiate between Compliance Alternative and Alternative Compliance.

WHEN DOES PART 10 OF DIV. B "CHANGE OF USE" APPLY?

You will recall from Module Five that Section 10 of the *Building Code Act* deals with the change of use of a building or part of a building.

Basically, even though no construction is proposed, the change of use of a building or part of a building requires a Change of Use Permit and an evaluation under Part 10 of Div. B, by way of Div. A, Sentence 1.1.2.5.(1) if the proposed change would result in an increase in hazard as determined by Div. C, Article 1.3.1.4.

If the proposed Change-of-Use without construction, does not constitute an increase in hazard, a change of use permit is not required.

[BCA Subsection 10.-(1) and Div. C, Sentence 1.3.1.4.(1)]

The determination of an increase in hazard requiring an evaluation under Part 10 of Div. B, is triggered by Div. A, Article 1.1.2.5. and Div. C, Article 1.3.1.4. The evaluation under Part 10 of Div. B is to determine **if** the performance level of the building after the change of use will be reduced. The reduction in performance level is determined from Div. B, Article 10.3.2.2.

When the evaluation concludes that there is no reduction in performance level, the CBO would, under the authority of Subsection 10.-(2) of the BCA, issue the Change of Use Permit.

When the evaluation determines that there is a reduction in the performance level of the building, this means one of two things.

In the first instance, when the reduction in performance level can be restored without construction by the means available in Div. B, Article 10.3.2.2. or Section 10.4. "Compliance Alternatives" the CBO would, under the authority of Subsection 10.-(2) of the BCA, issue the Change of Use Permit.

In the second instance, when the reduction in performance level is required to be restored by construction, the CBO would not issue a Change of Use Permit under Section 10. The provisions of Div. B, Part 11 "Change of Major Occupancy" would apply to this second instance and the CBO would issue a Building Permit referenced in Subsection 8.-(1), when the provisions of Clauses 8.-(2)(a) to (f) of the BCA have been satisfied.

As we saw in Module Five, Subsection 10.-(2) of the BCA compels the CBO to issue a Change of Use permit unless:

- the building, if used as proposed, would be in contravention of:
 - -the Building Code Act.
 - or
 - -the Ontario Building Code,
 - or
 - -any other applicable law.
 - OF
- √ the application is not complete,
 - OF
- ✓ the fees are not paid.

DETERMINATION OF REQUIREMENT FOR AN EVALUATION AND A CHANGE OF USE PERMIT

A Change of Use Permit is required when the proposed change of use results in an increase in hazard as determined by Div. C, Article 1.3.1.4. and the performance level of the building is maintained, without construction, under Part 10 of Div. B.

EXERCISE # 1- DETERMINATION IF A CHANGE OF USE PERMIT IS REQUIRED

To complete this exercise you will need to consult Div. C, Article 1.3.1.4. to determine if a Change of Use Permit under Section 10 of the BCA would be required when the evaluation under Part 10 of the OBC concludes that construction is not required to maintain the performance level of the building after the change of major occupancy. You are asked to fill in the appropriate information in the following chart.

	CONDITION	CHANGE OF PERMIT REQ UNDER S. 10 (BCA? YES	UIRED	DIV. C REFERENCE	
1	A restaurant major occupancy (A-2) changes to a residential occupancy (C)				
2	A residential occupancy (C) is changed to a mercantile (E) occupancy				
3	An office occupancy (D) is changed to a low hazard industrial occupancy (F-3)				
4	A mercantile occupancy (E) is changed to an office occupancy (D)				
5	A medium hazard industrial occupancy (F-2) is changed to a low hazard industrial occupancy (F-3)				
6	A residential suite is converted into two suites of residential occupancy				
7	A farm building is being changed into a factory (F-2)				
8	An occupancy is being proposed but the previous occupancy is not known				
9	A mercantile occupancy (E) is being converted to an office (D) but construction is proposed.				
10	A roads garage (F-2) is being converted into an ambulance garage(F-2)				

STOP

CHANGE OF USE AND CLASSIFICATION OF BUILDINGS, COMPULSORY REQUIREMENTS AND DETERMINATION OF PERFORMANCE LEVEL

Once you have established that an evaluation under Part 10 of Div. B, is triggered by the increase in hazard created by the proposed change of use, you must classify the new use, determine compliance with the minimum requirements for the new occupancy as if it were new construction and evaluate if the performance level of the building is reduced by the change of use.

CHANGE OF USE AND CLASSIFICATION OF THE NEW OCCUPANCY

1- the major occupancy determination is exactly as it would be for a new building; that is, in accordance with Div. B, Subsection 3.1.2.

[Div. B, Sentence 10.2.1.1.(1), see Div. B, Table 3.1.2.1.]

2- The determination of the Construction Index of the existing building and the Hazard Index created by the new occupancy is calculated exactly as in Div. B, Part 11 "Renovation" for a change of major occupancy.

[Div. B, Sentence 10.2.1.2.(1) sends you to Sentence 11.2.1.1.(1)]

3- The building size and construction requirements relative to occupancy from Div. B, Articles 3.2.2.20 to 3.2.2.83 in the case of new construction, DO NOT APPLY to a Div. B, Part 10 "Change of Use".

[Div. B, Sentence 10.2.1.3.(1)]

CHANGE OF USE AND CODE REQUIREMENTS AS IF NEW CONSTRUCTION WAS INVOLVED

4- Considering that Compliance Alternatives and Alternative Solutions may be used to achieve compliance without construction, a building or part of a building that is subject to a change of major occupancy must conform to the following as if the change of use in the building or part thereof were new construction:

[Div. B, Sentence 10.3.1.1.(1)]

- a) Additional Requirements for High Buildings
 [Div. B, Subsection 3.2.6.]
- b) Health Requirements [Section 3.7.]
- c) Public Pools and Public Spas [Sections 3.11. & 3.12.]
- d) Design of Areas and Spaces
 [Subsections 9.5.1. and 9.5.3. to 9.5.7.]
- e) Windows and Skylights [Section 9.7.]
- f) Flame Spread Limits [Subsection 9.10.17.]
- g) Plumbing Facilities [Section 9.31.]
- h) Ventilation [Section 9.32.]
- Electrical Facilities
 [Subsection 9.34.1.]
- j) Lighting Outlets, and [Subsection 9.34.2.]
- k) Emergency Lighting [Subsection 9.34.3.]

CHANGE OF USE AND PERFORMANCE LEVEL OF BUILDING WITH NEW OCCUPANCY

5- The Performance Level of the building after the change of use must NOT be less than the Performance Level of the building prior to the proposed Change of Use. [Div. B, Sentence 10.3.2.1.(1)]

To determine if there is a reduction in the Performance Level, an evaluation under Div. B, Sentences 10.3.2.2.(1) to (11) must be performed.

[Div. B, Sentence 10.3.2.1.(2)]

The proposed change of use is not permitted when the change of major occupancy will not comply with Div. B, Article 3.1.3.2 **Prohibition of Occupancy Combination**, and Article 9.10.9.12. **Residential Suites**, **Live/Work Units and Industrial Buildings**. Certain occupancy combinations are simply prohibited in new construction, a change of use and a renovation.

[Div. B, Sentences 10.3.2.2.(10) and 11.2.1.3.(1)]

EXERCISE # 2 - DETERMINATION OF STATUS OF THE PERFORMANCE LEVEL

Consult Div. B, Sentences 10.3.2.2.(1) to (5) and complete the following Table.

	CONDITION	REDUCTION IN PERFORMANCE UNDER ARTICLE 10.3.2.2 OF Div. B? YES NO		DIV. B REFERENCE	
1	The New Hazard Index is greater than the existing Hazard Index but less than the Construction Index of the building.				
2	Early Warning/Evac. requirements for new occupancy do not comply with Div. B, Table 10.3.2.2.A.				
3	The new live load is less than the existing live load.				
4	The new major occupancy has a higher Hazard Index than the original area.				
5	The new live load is greater than the area was designed for but the maximum live load is posted.				



CHANGE OF USE AND PERFORMANCE LEVEL OF BUILDING WITH NEW OCCUPANCY CONTINUED

6- The Hazard Index from Div. B, Tables 11.2.1.1.B. to 11.2.1.1.N. may be reduced by 1 if the building:

faces multiple streets,

and

is small or medium sized.

and

does not contain a Group B Division 1, a Group C or a Group F Division 1 occupancy,

and

fire fighting access from all streets complies with the code. [Div. B, Clauses 10.3.2.2.(6)(a) and (b)]

7- The Performance Level of a building or part of a building is reduced if the existing building is of combustible construction when:

the new occupancy is classified as residential,

and

the building, if it were new construction, would be required to be of noncombustible construction.

[Div. B, Sentence 10.3.2.2.(7)]

8- The Change of Use in paragraph 7- above does NOT result in a reduction in performance <u>if</u>:

the new occupancy is residential,

and

the building is sprinklered.

and

the building is 6 storeys or less in building height.

[Div. B, Sentence 10.3.2.2.(8)]

9- The Performance Level of a building or part of a building is reduced if the new major occupancy is not separated from the adjoining major occupancies by the fire separations required by Div. B, Article 3.1.3.1., Subsection 9.10.9. or Table 10.3.2.2.B. It is important to note that Table 10.3.2.2.B. allows some reductions from the fire separations between adjoining major occupancies required in new construction.

[Div. B, Sentence 10.3.2.2.(9)]

10- The Performance Level of a building is reduced when, after the change of use, the building would contain a combination of occupancy prohibited by either Article 3.1.3.2. or 9.10.9.12. of Division B. Such reduction in the performance level of a building cannot be restored by construction nor a compliance alternative nor an alternative solution as the combination of occupancy is prohibited in the case of new construction, a change of use and a renovation.

[Div. B, Sentence 10.3.2.2.(10) and 11.2.1.3.(1)]

11- The Performance Level of a building or part of a building is reduced if:

the new total daily design sanitary sewage flow exceeds the design capacity of any component of the sewage system serving the building,

or

the new type or quantity of sewage produced would be prohibited by Div. B, Article 8.1.3.1.

[Div. B, Clauses 10.3.2.2.(11)(a) and (b)]

If any of the 11 above conditions yield a reduction in the Performance Level that cannot be addressed under Div. B, Part 10 without construction, then a Section 10 Change of Use Permit is **NOT** issued. When upgrading is required by construction, a Permit under Section 8 of the BCA is required.

[Div. C, Sentence 1.3.1.4.(2)]

A Compliance Alternative (C.A.) under Div. B, Section 10.4. or an accepted Alternative Solution under Division A, Clause 1.2.1.1.(1)(b) may be used in connection with an analysis under Part 10 of Division B to avoid construction and proceed with a Change of Use Permit under Section 10 of the BCA.

When the building has been in existence for less than five years, a C.A. may only be used in respect to the requirements for Early Warning and Evacuation evaluated under Div. B, Sentence 10.3.2.2.(3), the comparison of Hazard and Construction Indices under Sentence 10.3.2.2.(5) and the separation of adjoining major occupancies in Table 10.3.2.2.B.

[Div. B, Sentences 10.4.1.1.(3)]

Facilitator / Self-Study
Participant Note: The
verification of the new total
daily design sanitary
sewage flow against the
capacity of the components
of an existing sewage
system must be carried out
by an Inspector who has
the qualifications set out in
Div. C. Row 10 of Table
3.5.2.1.

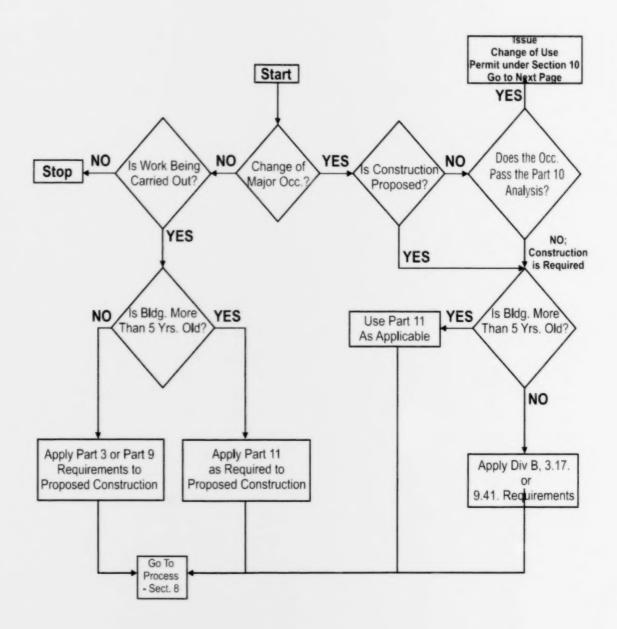
Such plans review is considered a substantial part of the plans review activity. See Note 1 to Div. C. Table 3.5.2.1.

EXERCISE # 3 - DETERMINATION OF STATUS OF THE PERFORMANCE LEVEL CONTINUED

Consult Div. B, Sentences 10.3.2.2.(7) to (11) and complete the following Table.

	CONDITION	REDUCTION IN PERFORMANCE UNDER PART 10 OF DIV. B? YES NO	DIV. B REFERENCE	
1	A new mercantile occupancy [Group E] is to be located adjacent to a restaurant [Group A-2]. There is a 45 minute fire separation between the occupancies. [Div. B, Table 3.1.3.1. requires a fire separation with 2 h of fire-resistance rating and C.A. of Table 10.3.2.2.B. would allow 1.5 h or 1 h in sprinklered buildings.]			
2	A 5 storey high sprinklered office building [Group D] is changed into an apartment building [Group C].			
3	New construction would require a 1h fire separation between major occupancies but 30 min is provided and the building is not sprinklered.			
4	A building of combustible construction will be converted to a residential occupancy [Group C] and if this was new construction it would be required to be of noncombustible construction.			
5	The new total daily design sanitary sewage flow can be accommodated by the existing plumbing system but not by the components of the on-site sewage system.			
6	The type or amount of sanitary sewage to be generated by the new occupancy is prohibited in Div. B, Article 8.1.3.1.			

Part 10/11 Flow Chart Change of Use



DIV. B, PART 11 RENOVATION

INTRODUCTION

Part 11 of Division B facilitates the renovation and re-use of existing buildings that are at least five years old. Part 11 also applies to an addition that is less than five years old where the original building is at least five years old.

[Div. A, Sentences 1.1.2.6.(1) and (2)]

When the reduction in the performance level of a building as determined in accordance with Div. B, Article 10.3.2.2. cannot be redressed without construction and the building is less than five years old, the resulting construction for the change of use is subject to either Section 3.17. or 9.41. of Division B, as the case may be.

[Div. A, Sentence 1.1.2.7.(1)]

DETERMINATION OF THE CONSTRUCTION INDEX AND HAZARD INDEX

When the building is more than five years old, the requirements of change of major occupancy under Div. B, Part 11 apply. Basically, where proposed construction will result in the change of major occupancy of all or part of an existing building, the building must be classified as to its:

- construction index [Div. B, Clause 11.2.1.1.(1)(a)]
 and
- hazard index. [Div. B, Clause 11.2.1.1.(1)(b)]

DETERMINATION OF THE CONSTRUCTION INDEX

Table 11.2.1.1.A. of Division B is used to establish the Construction Index of an existing building when a change of major occupancy of a building or part thereof requires construction. [Div. B, Clause 11.2.1.1.(1)(a)]

According to Div. A, Clause 1.4.1.2.(1)(b) Construction Index means a level on a scale of 1 (lowest) to 8 (highest) determined in accordance with Table 11.2.1.1.A. of Division B designating the expected performance level of the building structure with respect to the type of construction and fire protection of an existing building and "C.I." has a corresponding meaning.

Facilitator/Self-Study
Participant Note: For the
determination of the
Construction Index of an
existing building from
Table 11.2.1.1.A., building
height and occupancy are
not factors. For the
determination of the fireresistance rating of the
assemblies identified in
Columns 1 to 3, consult
Compliance Alternatives A5, B-4, C-5, C-140, DE-5,
DE-118, F-5 and F-120.

Similarly to Part 10, the requirements of Articles 3.2.2.20. to 3.2.2.83., that are used to determine the construction of a new building relative to its size and occupancy, do not apply to a Part 11 Renovation.

[Div. B, Sentence 11.2.1.1.(3)]

EXERCISE # 4 - DETERMINATION of the CONSTRUCTION INDEX of EXISTING BUILDINGS

Consult Div. B, Sentence 11.2.1.1.(1) and Table 11.2.1.1.A. and determine the Construction Index (C.I.) of the following buildings.

	Construction Details and Fire-Resistance Ratings of Floor and Roof Assemblies	Construction Index
1	Building 6 storeys in height and noncombustible construction floor over basement - 45 min. fire-resistance rating, other floors - 0 fire-resistance rating, roof - 0 fire-resistance rating.	
2	Building 10 storeys in height and noncombustible construction floor over basement - 45 min. fire separation, other floors - 45 min fire separations, roof - 45 min fire-resistance rating.	
3	Building 3 storeys in height and noncombustible construction no basement, other floors - 45 min fire separations, roof - 45 min fire-resistance rating.	
4	Building 3 storeys in height and combustible construction no basement, other floors - 45 min fire separations, roof - 45 min fire-resistance rating.	
5	Building 8 storeys in height and noncombustible construction no basement, other floors - 0 min fire separations, roof - 0 min fire-resistance rating.	
6	Building 2 storeys in height and combustible construction floor over basement - 0 min. fire separation, other floors - 45 min fire separations, roof - 0 min fire-resistance rating.	



THE HAZARD INDEX OF THE PROPOSED OCCUPANCY

According to Div. A, Clause 1.4.1.2.(1)(b), Hazard index means a level on a scale of 1 (lowest) to 8 (highest) determined in accordance with Tables 11.2.1.1.B. to 11.1.2.1.1.N. of Division B designating the life safety hazard to occupants of the building based on:

- (a) use and occupancy,
- (b) occupant load.
- (c) the use and function of floor spaces.
- (d) the difficulty of egress,
- (e) the fire load of contents, finishes and furnishings,
- (f) the configuration or compartmentation of floor spaces, and
- (g) the size of building, and "H.I." has a corresponding meaning.

It is important to keep in mind that when determining the Hazard Index (H.I.) of the new occupancy, a building which faces multiple streets and is categorized as *small* or *medium* in size, may be assigned a hazard index credit of 1, to reduce the additional upgrading required by Table 11.4.3.4.A. of Div. B <u>if</u>:

 the building does NOT contain a Group B, Division 1, a Group C or a Group F, Division 1 occupancy,

AND

- fire fighting access complying with Div. B, Articles
 - 3.2.5.1. Access to Above Grade Storeys,
 - 3.2.5.2. Access to Basements,
 - 3.2.5.3. Roof Access,
 - 3.2.5.4. Access Routes, and
 - 3.2.5.5. Location of Access Routes

OR

Subsection 9.10.20. Fire Fighting in the case of a Part 9 building.

[Div. B, Clauses 11.2.1.1.(2)(a) and (b)]

Similarly to the determination of Construction Index, the requirements of Articles 3.2.2.20. to 3.2.2.83., that are used to determine building size and construction relative to occupancy in new construction, do not apply to a Div. B, Part 11 Renovation. [Div. B, Sentence 11.2.1.1.(3)]

EXERCISE # 5 - DETERMINATION of the HAZARD INDEX of the BUILDING with the PROPOSED OCCUPANCY

Consider Division B, Clause 11.2.1.1.(1)(b), Sentence 11.2.1.1.(2) and Tables 11.2.1.1.B. to 11.2.1.1.N. and establish the Hazard Index (H.I.) for each occupancy condition described. Assume that the building complies with the code for fire-fighting access.

					,	
	Occupancy Condition	Occupancy Classification see Div. B Table 3.1.2.1.	Use Div. B, H. I. Table	Building Size and initial H.I.	H. I. Credit of 1 yes/no why?	Final Hazard Index
1	a restaurant, 1 storey in building height 850 m ² in building area, building faces 2 streets.	Group A Division 2			*	
2	a residential apartment building, 5 storeys in building height, 1500 m ² in building area, building faces 3 streets.	Group C			**	
3	an office for Medical Examinations, 3 storeys in building height, 1500 m ² in building area, building faces 2 streets.	Group D				
4	a shopping mall, 3 storey in building height building is sprinklered, 2000 m ² in building area, building faces 3 streets.	Group E			*	
5	a flour mill, 1 storey building, 200 m ² in building area, facing 4 street.	Group F Division 1			**	
6	an aircraft hanger, 1 storey building, 700 m ² in building area, facing 3 streets.	Group F Division 2			+	

^{*} H.I. credit of 1 from Sentence 11.2.1.1.(2) does not apply to large buildings

^{**} H.I. credit of 1 does not apply to this occupancy classification, Div. B, Clause 11.2.1.1.(2)(a)



CLASSIFICATION OF MULTIPLE OCCUPANCIES

Multiple occupancies are classified exactly as they would be for new construction; that is, in accordance with Div. B, Articles 3.2.2.5. to 3.2.2.8.

[Div. B, Sentence 11.2.1.2.(1)]

The prohibition of certain types of occupancy combinations in a Div. B, Part 11 Renovation are the same as those prohibited in a Part 10 Change-of-Use or the construction of a new building under Part 3 or 9, as the case may be.

[Div. B. Sentence 11.2.1.3.(1) Articles 3.1.3.2. and 9.10.9.12.]

Facilitator/Self-Study Participant Note: See Div. B, Sentence 11.1.1.2.(1) for the definition of "building system".

EXTENSION, MATERIAL ALTERATION OR REPAIR

When an existing building is subject to extension, material alteration or repair,

 the proposed construction must comply with Div. B, Section 11.3.,

and

 the performance level of the building must be evaluated and compensating construction must be carried out in accordance with Section 11.4. of Division B.
 [Div. B, Clauses 11.1.2.1.(1)(a) and (b)]

MATERIAL ALTERATION OR REPAIR OF AN EXISTING BUILDING SYSTEM

A material alteration or a repair to an existing building system shall be performed in such a manner that the performance level of the building after construction is at least equal to the performance level of the building before the construction occurred.

[Div. B, Sentence 11.3.1.1.(1)]

NEW BUILDING SYSTEMS AND EXTENSION OF EXISTING BUILDING SYSTEMS

Not including a Basic Renovation, a Compliance Alternative or an Alternative Solution, the design and construction of new building systems and extensions to existing building systems must be in compliance with all other Parts of Division B.

[Div. B, Sentence 11.3.1.2.(1)]

EXTENSION OF BUILDINGS

When an existing building is extended, Part 11 applies to the existing portion of the building and the addition must comply with all other Parts of Division B.

[Div. B, Clauses 11.3.2.1.(1)(1)(a) and (b)]

BASIC RENOVATION

Not including construction in respect of a hotel or an Extensive Renovation, construction may be carried out to maintain the existing performance level of all or part of an existing building, by the reuse, relocation or extension of the same or similar materials or components, to retain the existing character, structural uniqueness, heritage value, or aesthetic appearance of all or part of the building <u>if</u>, the construction will not adversely affect the early warning and evacuation systems, fire separations, the structural adequacy or create an unhealthy environment in the building. [Sentence 11.3.3.1.(1)]

When the renovation is considered an Extensive Renovation, the requirements of Article 11.3.3.2. apply. [Div. B, Sentence 11.3.3.1.(1)]

When the **Basic Renovation Extensive Renovation** involves a hotel, the construction may only be carried out in accordance with Part 9 of the *Fire Protection and Prevention Act*, 1997. [Div. B, Sentence 11.3.3.1.(2) and definition of hotel in Div. A,

Clause 1.4.1.2.(1)(b)]

Appendix A informs us that the Basic Renovation is the simplest form of renovation; the work area is limited in size (within a suite or room), and does not involve a decrease in performance level of the building. The limit in size assures that accesses to exits, corridor separations, or other life safety systems are left intact, where less than a full area is under renovation.

[Appendix A, Explanatory Material for Division B, A-11.3.3.1. Basic Renovation]

EXTENSIVE RENOVATION

Where existing interior walls or ceilings or floor assemblies or roof assemblies are substantially removed in an existing building and new interior walls, ceilings, or floor assemblies are installed in the building, structural and fire-resistance elements shall be constructed in compliance with the requirements of the other Parts of Division B.

[Div. B, Sentence 11.3.3.2.(1)]

Appendix A informs us that in cases where extensive renovation of the building is proposed, there is generally no reason why the new systems should not comply with new construction requirements; in this case the applicant may seek relief only through "alternative solutions", should a construction difficulty arise that requires such relief. This would apply to the substantial renovation of the entire building.

[Appendix A, Explanatory Material for Division B, A-11.3.3.2. Extensive Renovation]

EXTENSIVE RENOVATION AND BARRIER-FREE DESIGN

Not including the use of a Compliance Alternative under Section 11.5 of Division B, proposed construction within an existing suite must comply with the requirements of Section 3.8., Barrier-Free Design, where:

 a) the existing interior walls or floor assemblies within the suite are substantially removed,

and

- b) new interior walls or floor assemblies are installed, and
- c) the suite has an area greater than 300 m², and
- d) the suite is located on:
 - a floor area where the existing difference in elevation between the adjacent ground level and the floor level is not more than 200 mm.

or

ii) a normally occupied floor area which is accessible by a passenger type elevator or other platform equipped passenger elevating device from an entrance storey where the existing difference in elevation between the adjacent ground level and the entrance storey level is not more than 200 mm.

[Div. B, Clauses 11.3.3.2.(2)(a) to (d)]

EXISTING PLUMBING SYSTEMS AND EXTENSIONS

Where an existing plumbing system is extended or subject to a material alteration or repair in a Basic or Extensive Renovation, the construction of plumbing must comply with Part 7. [Div. B, Clauses 11.3.4.1.(1)(a) and (b)]

NOTA BENE:

In Tables 11.5.1.1.A. to 11.5.1.1.F., there are no Compliance Alternative from the provisions of Div. B, Part 7.

PERFORMANCE LEVEL EVALUATION AND COMPENSATING CONSTRUCTION

EVALUATION OF THE PERFORMANCE LEVEL UNDER DIVISION B, SUBSECTION 11.4.2.

Similarly to a Div. B, Part 10 Change-of-Use, the performance level of a building after construction under Div. B, Part 11, must not be less than the performance level of the building prior to construction.

[Div. B, Sentence 11.4.1.1.(1)]

The reduction in Performance Level of a building subject to renovation construction is assessed from Div. B, Subsection 11.4.2.

[Div. B, Sentence 11.4.1.1.(2)]

Where there is a reduction in the Performance Level, that reduction must be offset by compensating construction as provided by Div. B, Subsection 11.4.3.

[Div. B, Sentence 11.4.1.1.(3)]

Facilitator/Self-Study
Participant Note: All of the
reductions in the
Performance Level of a
huilding and the associated
C o m p e n s a t i n g
Construction required to
restore the performance
level will be addressed
later in this module.

The provisions of Div. B, Subsection 11.4.2. identify a number of situations which could result in a reduction in the Performance Level of a building. The areas of consideration deal with:

- the adequacy of the structural system,
- an increase in occupant load,
- a change of major occupancy,
- adverse effects on plumbing, and
- adverse effects on the on-site sewage system.

- Under the <u>STRUCTURAL</u> provisions, a reduction in the Performance Level of the existing building occurs when proposed construction in all or part of the building causes:
 - a) the major occupancy to change to a different major occupancy.

or

b) the occupant load to increase by more than 15%.

or

 the live load to increase due to a change in use within the same major occupancy

and

the existing structural members are not adequate to support the proposed dead and live loads.

[Div. B, Clauses 11.4.2.1.(1)(a), (b) and (c)]

- Not including on-site sewage systems, under the <u>INCREASE</u>
 <u>IN OCCUPANT LOAD</u> provisions, a reduction in the Performance Level of the existing building occurs when the proposed construction will increase the occupant load of the existing building:
 - a) by more than 15%, [Div. B, Sentence 11.4.2.2.(1)]

or

 b) by 15% or less and the new occupant load will be more than 15% above the occupant load for which a fire alarm system is required under Sentence Div. B, Sentence 3.2.4.1.(2),

[Div. B, Sentence 11.4.2.2.(2)]

or

 by 15% or less and the new occupant load will be more than 15% above the existing exit capacity required under Div. B, Article 3.4.3.4.

[Div. B, Sentence 11.4.2.2.(3)]

or

- 3. Not including on-site sewage systems, under the <u>CHANGE</u> <u>OF MAJOR OCCUPANCY</u> provisions, a reduction in the Performance Level of the existing building occurs where the proposed construction will result in a:
 - a) new major occupancy in all or part of the existing building with a greater Hazard Index than the previous occupancy, [Div. B, Clause 11.4.2.3.(1)(a)]
 - or
 b) residential suite being converted into more than one suite of residential occupancy,
 [Div. B, Clause 11.4.2.3.(1)(b)]
 - or
 c) suite or part of a suite of Group A, Division 2 or Division 4 major occupancy being converted to a gaming premises, [Div. B, Clause 11.4.2.3.(1)(c)]
 - or
 d) farm building or part thereof being changed to a major occupancy,
 [Div. B, Clause 11.4.2.3.(1)(d)]
 - or
 e) building or part of a building being changed to a post-disaster building,
 [Div. B, Clause 11.4.2.3.(1)(e)]
 - f) change in use of a building or part thereof and the previous major occupancy is not known.
 [Div. B, Clause 11.4.2.3.(1)(f)]
- Under the <u>CHANGE OF MAJOR OCCUPANCY</u> provisions, the Performance Level of the existing building is also reduced where:
 - a) the capacity of the existing early warning and evacuation system is inadequate for the new major occupancy, [Div. B, Sentence 11.4.2.3.(3)]
 - b) the fire separation between the existing and proposed major occupancy does not comply with Div. B, Tables 3.1.3.1. and 11.4.3.4.B.,
 [Div. B, Sentence 11.4.2.3.(4)]

OF

 the existing building is of combustible construction and the new major occupancy would require the building to be of noncombustible construction if it were a new building.
 [Div. B, Sentence 11.4.2.3.(5)]

Under the **PLUMBING** provisions, the Performance Level of an existing building is reduced where:

 a) the material alteration, repair or extension will adversely affect the plumbing in the existing building.
 [Div. B, Sentence 11.4.2.4.(1)]

Under the **SEWAGE SYSTEMS** provisions, a reduction in the Performance Level occurs if:

 a) the sewage system serving the building is adversely affected by an extension, material alteration or repair, [Div. B, Sentence 11.4.2.5.(1)]

or

 b) not including dwelling units, the proposed construction causes an increase in the occupant load and the new total daily design sanitary sewage flow will exceed the capacity of any component of the existing sewage system,
 [Div. B, Sentence 11.4.2.5.(2)]

or

c) the proposed construction in a dwelling unit;

i) increases the number of bedrooms,

or

ii) exceeds 15% of the finished area,

or

iii) adds new plumbing fixtures,

and

where the new total daily design sanitary sewage flow will exceed the capacity of any component of the existing sewage system,

[Div. B, Clauses 11.4.2.5.(3)(a), (b) and (c)]

or

- d) the proposed construction and change in major occupancy of a building or part thereof would:
 - i) cause the new total daily design sanitary sewage flow to exceed the capacity of any component of the existing sewage system,

or

ii) generate a type or amount of sanitary sewage which is prohibited by Article 8.1.3.1. of Division B. [Div. B, Clauses 11.4.2.5.(4)(a) and (b)]

EXERCISE #6 DETERMINATION OF REDUCTION IN PERFORMANCE LEVEL OF AN EXISTING BUILDING

Consult Div. B, Subsection 11.4.2. and complete the following Table. For each condition stated, determine if there will be a reduction in the performance level of the building. Support your answer with an OBC reference.

	Condition		Reduction in performance level?	
		yes	no	
1	construction will result in a change of major occupancy with a greater H. I. than that of the previous occupancy			
2	the structural system can accommodate the proposed construction and change in major occupancy			
3	construction will result in an additional bathroom in a dwelling unit with an on-site sewage system where the components of the existing sewage system can accommodate the new total daily design sanitary sewage flow			
4	construction will result in an additional bathroom in a dwelling unit with an on-site sewage system where the components of the existing sewage system cannot accommodate the new total daily design sanitary sewage flow			
5	construction will cause an occupant load increase less than 15% but the new occupant load will be more than 15% greater than the occupant load requiring a fire alarm system			
6	construction will result in an occupancy which will produce a type or quantity of sanitary sewage which is not permitted under Article 8.1.3.1. of Division B			
7	construction will cause a change of major occupancy and the existing structural system is not adequate for the new occupancy			

STOP

COMPENSATING CONSTRUCTION UNDER DIV. B, SUBSECTION 11.4.3. TO RESTORE THE PERFORMANCE LEVEL

Where it has been determined by Subsection 11.4.2.of Division B, that there will be a reduction in the Performance Level of the building and this includes an increase in Hazard Index from the original occupancy in the case of a change of major occupancy, compensating construction in accordance with Subsection 11.4.3. of Division B must be carried out in order to restore the Performance Level of the building.

[Div. B, Sentences 11.4.1.1.(3) and 11.4.3.1.(1)]

Compensating construction to restore the performance level of the building applies:

 a) to any existing building system that is adversely affected by the proposed construction,
 [Div. B, Sentence 11.4.3.1.(3)]

and

- b) the part of the building being altered, including:
 - i) the rated fire separations between the part being altered and the areas above, below and adjacent to it,

[Div. B, Clause 11.4.3.1.(2)(a)]

and

 access to exits and exits from the building where the alteration adversely affects the exit system of the building.

[Div. B, Clause 11.4.3.1.(2)(b)]

Compensating Construction addresses the same subject areas as those addressed in the "Reduction in Performance Level"; that is, structural, increase in occupant load (O.L.), change in major occupancy, plumbing and sewage systems.

The following Table indicates the corresponding Compensating Construction for each reduction in the Performance Level of a building. All references in the following Table are to provisions under Division B.

Reduction in the Performance Level of the Building under:	Corresponding Compensating Construction Required to restore the performance level of the building			
STRUCTURAL [11.4.2.1.]	1- Construction to support the new proposed loads, [Clause 11.4.3.2.(1)(a)] or 2- post signs of the maximum allowable loads. [Clause 11.4.3.2.(1)(b)]			
OCCUPANT LOAD (OL) INCREASE [11.4.2.2.]	1- evaluate proposed end use and upgrade early warning and evacuation systems where necessary to conform with Table 11.4.3.3. [Sentence 11.4.3.3.(1)] (a) Exception 1 upgrading of early warning and evacuation system as per Table 11.4.3.3. is not required where the new total OL is 14 persons or less in a boarding, lodging or rooming house or where the OL is between 10 and 15 persons and an interconnected system of smoke alarms is provided in corridors near stairways. [Clause 11.4.3.3.(2)(a)] (b) Exception 2 upgrading of early warning and evacuation system as per Table 11.4.3.3. is not required where the new total OL is 16 persons or less in a building containing suites of dwelling units and where the OL is between 10 and 17 persons an interconnected system of smoke alarms is provided near stairways. [Clause 11.4.3.3.(2)(b)] 2- for the new OL, provide the number of plumbing fixtures required by 3.7.4. or 9.31.1.1., as the case may be, and outdoor air is provided as required by			
CHANGE OF MAJOR OCCUPANCY [11.4.2.3.]	 additional upgrading required as per Table 11.4.3.4.A. so that the C.I. of the building is increased to be at least equal to the H.I. of the new occupancy. [Sentence 11.4.3.4.(1)] additional construction is required in order for the building or part subject to the new major occupancy comply with: 3.2.6., 3.7., 3.11., 3.12., 6.2.2.1.(2), 6.2.3.9.(1), 6.2.4.7.(10), 9.5.1.1. to 9.5.1.5., 9.5.3.1. to 9.5.10.1., 9.7., 9.10.17., 9.31., 9.32., 9.34.1. to 9.34.3. as applicable to the new major occupancy in the building or part thereof. [Sentence 11.4.3.4.(2)] the early warning and evacuation systems are to be evaluated and upgraded as per Table 11.4.3.3. [Sentences 11.4.3.4.(3), 11.4.3.3.(1)] if the fire separations between adjoining major occupancies are not adequate, upgrading in accordance with Article 3.1.3.1. and Table 11.4.3.4.B. is required. [Table 3.1.3.1. and Sentences 11.4.3.4.(4), 11.4.2.3.(4)] if the building was new construction and would be required to be of noncombustible construction but the existing building is of combustible construction, the entire building must be sprinklered. [Sentence 11.4.3.4.(5)] 			
PLUMBING [11.4.2.4.]	1- upgrading of the plumbing system to comply with Part 7 is required if the renovation adversely affects the existing plumbing system. [Sentence 11.4.3.5.(1)]			
SEWAGE SYSTEM [11.4.2.5.]	1- upgrading of the existing sewage system under Part 8 is required if the existing system is adversely affected. [Sentence 11.4.3.6.(1)]			

EXERCISE #7 EVALUATION AND UPGRADING OF EARLY WARNING/EVACUATION WHEN THERE IS REDUCTION IN PERFORMANCE LEVEL CAUSED BY:
AN INCREASE IN OCCUPANT LOAD, UNDER DIV. B, TABLE 11.4.3.3.
OR
A CHANGE OF MAJOR OCCUPANCY UNDER DIV. B, TABLE 11.4.3.4.A.

From Division B, consult Table 11.4.3.3. and Sentences 11.4.3.3.(1) and (2), Table 11.4.3.4.A. and Sentence 11.4.3.4.(1) and answer the following questions.

1. A new occupancy has a H.I. of 4 while the existing occupancy

had a H.I. of 3 and a C.I. of 3. Identify the analysis that must be performed in relation to the early warning and evacuation systems.

2. For the situation in Question # 1, what Additional Upgrading is required by Table 11.4.3.4.A.?

3. A new occupancy has a H.I. of 2 while the existing occupancy had a H.I. of 3 and a C.I. of 3. Identify the analysis that must be performed in relation to the early warning and evacuation systems when the OL is increased by more than 15%?

Facilitator/Self-Study
Participant Note: Column 4
is entitled "Alternative
Compliance" it is not to be
c o n fused with a
"Compliance Alternative"
under Section 11.5. of Div.
B. To satisfy the Additional
Required Upgrading, one
would comply with either
the provisions in Column 3
or those in Column 4.

4.	For the situation in Question # 3, what Additional Upgrading is required by Table 11.4.3.4.A.?
5.	A new occupancy has a H.I. of 3 while the previous occupancy had a H.I. of 6 and the existing building has a C.I. of 5. What analysis must be performed in relation to the early warning and evacuation systems?
6.	For the situation in Question # 5, what Additional Upgrading is required by Table 11.4.3.4.A.?
s	тор

COMPLIANCE ALTERNATIVES AND ALTERNATIVE SOLUTIONS

During a Change of Use under Part 10 of Div. B and a Renovation under Part 11, a Compliance Alternative (CA) listed in Tables 11.5.1.1.A. to 11.5.1.1.F. may be used as a substitute for a requirement in other Parts of Division B.

Similarly, the designer may propose an Alternative Solution as a substitute to either a Compliance Alternative or from a requirement in other Parts of Division B.

Compliance Alternatives and Alternative Solutions are to the technical provisions of Division B what minor variances are to zoning.

COMPLIANCE ALTERNATIVES

According to Div. A, Clause 1.4.1.2.(1)(b), a Compliance Alternative is a substitute for a requirement in another Part of Division B that is listed in Part 10 or 11 of Division B, and "C.A." has a corresponding meaning.

Compliance Alternatives facilitate the renovation and change of use of existing buildings that are more than five years old by providing relief from the requirements of Division B, if it were new construction while maintaining the intent of the Code which is to provide for the safety of occupants of buildings. The C.A.s listed in Tables 11.5.1.1.A. to 11.5.1.1.F. are associated with specific occupancies. For example, Table 11.5.1.1.A. is for Group A assembly occupancies, Table 11.5.1.1.B. is for Group B detention, care and treatment and care occupancies, etc...

The listed Compliance Alternatives are associated with the technical provisions of Division B found in Parts 3, 4, 6, 8, 9 and 12.

NOTA BENE:

The C.A.s dealing with a requirement contained in Part 3, 4, 6, 8 and 12 may only be applied if the CBO is satisfied that compliance with the requirement in Division B is impracticable because:

1- of structural or construction difficulties,
 OR

would be detrimental to the preservation of a heritage building.

[Div. B, Clauses 10.4.1.1.(1)(a) and (b) and 11.5.1.1.(1)(a) and (b)]

The use of a Compliance Alternative for a requirement contained in Part 9 of Division B may be applied without satisfying the Chief Building Official that compliance with the requirement in another Part of Division B is impracticable. In other words, the use of a Div. B, Part 9 Compliance Alternative does not require the authorization of the Chief Building Official.

[Div. B, Sentences 10.4.1.1.(2) and 11.5.1.1.(2)]

ALTERNATIVE SOLUTIONS

Alternative solutions will be dealt with in the next Module.

NOTA BENE: Alternative Measures are not a feature of Ontario's 2006 Objective-Based Code.

Exercise #8 - REVIEW OF MODULE ELEVEN

DIVISION B. PART 10 - CHANGE OF USE

Div. A, Article 1.1.2.5. informs us that Part 10 of Division B applie to existing buildings requiring a permit under Section 10 of the Ac	
According to Section 10 of the Act, even though no construction is proposed, no person can change the use of a building or part a building or permit the use to be changed if the change wou result in an increase in hazard, as determined in accordance wire Division C, Article 1.3.1.4., unless a permit has been issued by the Chief Building Official.	of ld th
Div. C Article 1.3.1.4. is used to determine if the propose occupancy constitutes an increase in hazard from the previous occupancy. If it is determined that the new occupancy constitute an increase in hazard, an analysis of the Performance Level of the building under Div. B, Part 10.	us es

Part 10 provides specific rules for what constitutes a reduction in the Performance Level of the building, or part thereof, and what should be done to re-establish the building to it's original Performance Level. If construction is required to restore the Performance Level, Part 11 kicks in and a Building Permit is required under Section 8 of the BCA and not a Change-of-Use Permit under Section 10 of the BCA.
DIVISION B, PART 11 - RENOVATION
Part 11 was established to provide flexibility in meeting life safety requirements when renovating existing buildings that are more than five years old, with or without a change in the occupancy of the building or part of the building. This flexibility will allow, subject to certain conditions, the use of compliance alternatives.
The basic procedure under Part 11, when there is a change of major occupancy is to establish the Construction Index of the existing occupancy and compare that with the Hazard Index of the proposed occupancy. An increase in the Hazard Index or any other Reduction in the Performance Level of the building as described in Subsection 11.4.2. of Division B must be compensated by construction as described in Subsection 11.4.3.

	Once it has been determined that Compensating Construction is required, an additional analysis of the existing and proposed conditions must be carried out with specific reference to Tables 11.4.3.3. in the case of an increase in occupant load, 11.4.3.4.A. in the case of a change of major occupancy and 11.4.3.4.B. in the case of multiple major occupancies.
	Compliance Alternatives may be used for the required or proposed construction, as applicable.
End of Day Three	

MODULE TWELVE - COMPLYING WITH DIVISION B

INTRODUCTION

In Module Three, you were introduced to Ontario's 2006 Objective-Based Building Code including its organization in three Divisions. In this Module, you will review the two options by which a design, construction, a building, a change-of-use or a renovation may comply with the technical provisions of Division B.

In the first option, Div. A, Clause 1.2.1.1.(1)(a) informs us that: compliance with Division B can be achieved by: complying with the applicable acceptable solutions in Division B.

In the second option, Div. A, Clause 1.2.1.1.(1)(b) informs us that compliance with Division B can be achieved by:

using <u>alternative solutions</u> that will achieve the level of performance required by the applicable acceptable solutions in Division B, in respect of the <u>objectives</u> and <u>functional statements</u> attributed to the applicable acceptable solutions in Division B by <u>Supplementary Standard SA-1</u>.

Div. A, Sentence 1.2.1.1.(2) goes on to inform us that: the level of performance in respect of a functional statement refers to the performance of the functional statement as it relates to the objective with which it is associated in Supplementary Standard SA-1.

In this Module, you will be provided with a sample process for the assessment of alternative solutions. Due to time constraints, you will not be given opportunities to practice and apply your new knowledge through exercises and case studies. However, in the interest of consistency a case study will be used in the sample process for the assessment of alternative solutions.

This Module has been developed for CBOs, Inspectors, Designers, RCAs and Persons authorized by a RCA who are familiar with the 1997 Code and who have experience in reading, understanding and applying the provisions of the 1997 Code. This Module will assist them in achieving compliance with Division B of Ontario's 2006 Objective-Based Code. Building Code Act practitioners of late will also benefit from this module.

Technical changes from the 1997 to the 2006 Code are not covered in this Module. While the General Legal/Process Course is not a technical course, the case study will make use of the technical provisions of Division B. The sample process for the assessment of *alternative solutions* will not conclude whether the proposed *alternative solution* complies with Division B, as provided by Division A, Clause 1.2.1.1.(1)(b). The course material will remain neutral in the conclusion whether to accept or refuse the proposed *alternative solution* because the authority to do so lies with the person having jurisdiction.

ONTARIO'S 2006 OBJECTIVE-BASED CODES

Every technical provision of Ontario's 2006 objective-based code achieves one or more of its objectives. The seven categories of objectives that are found in Division A, Table 2.2.1.1. are:

- OS Safety
- OH Health
- OA Accessibility
- OP Fire, Structural, Water and Sewage Protection of Buildings
- OR Resource Conservation
- OE Environmental Integrity
- OC Conservation of Buildings

Division B of the 2006 Code contains most of the technical provisions of the 1997 Code as well as new technical requirements. Compliance with the provisions of Division B is one option. In the 1997 Code, Parts 3 to 11 contained the prescribed and performance based technical provisions. In the 2006 Code the prescribed and performance based provisions of Parts 1 and 3 to 12 of Division B are known as *acceptable solutions*.

In the 1997 Code, compliance could also be achieved by using an equivalent material, system or building design. In the 2006 Code, equivalents are known as *alternative solutions*.

OBJECTIVES

In this Module you will:

Define the following terms.

- learn the terminology of the 2006 Objective-Based Code associated with acceptable solutions and alternative solutions
- ★ review how the provisions of the 2006 Code are applied in comparison to the 1997 Code
- be introduced to a sample process and sample forms for the submission and assessment of alternative solutions, using a case study

EXERCISE # 1 UNDERSTANDING THE TERMINOLOGY

To complete this exercise you will need to consult Division A.

a)	Acceptable Solution means:	
	OBC reference:	
b)	Alternative Solution means:	
	OBC reference:	
c)	Functional Statement means:	
_	OPC soforono	_

	-				
4)	Oh	ioct	11/0	mea	ne.
· u	UU	1001	IVE	IIIca	113.

OBC reference:	
ODG reference.	

e) Performance Level means:

OBC reference:		
Obc reference		

STOP

APPLYING THE 2006 CODE

The process of applying the 2006 Code is very similar to the process for applying the provisions of the 1997 Code. You will likely apply the 2006 Code using the *acceptable solutions* of Division B most of the time. Each Division B technical requirement satisfies at least one *objective* of the 2006 Code. IT IS NOT NECESSARY to consult the objectives when applying the requirements of Division B, it is an optional step.

FLOW CHART OF SAMPLE PROCESS FOR APPLYING THE 2006 CODE

The flow chart on the next page illustrates steps in applying the 2006 Code. The first three steps down the centre of the flow chart and the last step are the same whether compliance with Division B is achieved by using:

 the acceptable solutions of Division B under Clause 1.2.1.1.(1)(a) of Division A

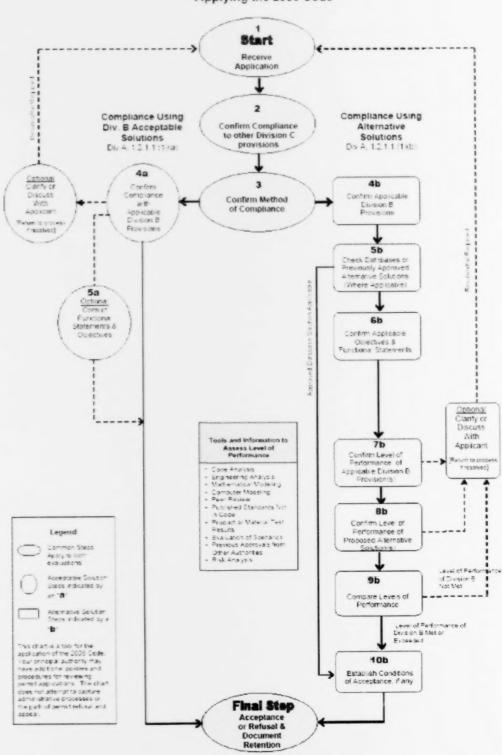
or

alternative solutions under Clause 1.2.1.1.(1)(b) of Division A.

Facilitator . Self-Study Participant Note: The terms Performance Level and Level of Performance are not synonymous. The term Performance Level applies to a Div. B. Part 10 Change-of-use and a Part 11 Renovation. In the first instance the Performance Level is determined from Article 10.3.2.2.. as provided by Sentence 10.3.2.1.(2). In the second instance the Performance Level is determined from Subsection 11.4.2.. as provided by Sentence 11.4.1.1.(2).

In this Module, you will see how the level of performance of an acceptable solution and that of an alternative solution is determined.

Applying the 2006 Code



Step 1
Start
Receive Application

Step 1 Start, receive application conforming to:

- Div. C, Clauses 1.3.1.3.(5)(a) to (e) in the case of an application for a permit under Subsection 8.-(1) of the Act, [see Sentences 1.3.1.3.(6) to (9)]

or

 the Instrument of the Principal Authority, enacted under the authority of Section 7 of the BCA, in the case of an application for a change-of-use permit under Subsection 10.-(1) of the Act.

Step 2
Confirm compliance with other
Division C provisions

Step 2, Confirm compliance with other Division C provisions:

- Article 1.3.1.1., requirements for permits,
- Section 3.2., Qualifications of designer who is not an Architect or Professional Engineer
- Section 3.3, Qualifications of Person engaged in the business of constructing on site, installing, repairing, servicing, cleaning or emptying sewage systems, and
- Part 4 to identify the Ontario Regulation(s) under which the plans review and inspection activities will take place.

Step 3 Confirm method of compliance Step 3, Confirm that the method of compliance with Division B is by using the *acceptable solutions* of Division B. [Div. A, Clause 1.2.1.1.1(1)(a)]

NOTA BENE:

Unless the applicant has submitted the documentation identified in Division C, Part 2, Section 2.1., supporting an alternative solution, proceed with the plans review for compliance with the acceptable solutions of Division B. In which case you would proceed to Step 4a.

Step 4a
Confirm compliance with applicable Division B provisions

Step 4a, Confirm compliance with the applicable Division B provisions. The plans review exercise is done the same way it was done under the 1997 Code. To identify the Parts of Division B that apply, consult Div. A, Subsection 1.1.2.



Step 5a, This step is optional. Consult linked pairs of functional statements and objectives. You will learn how to do this when we deal with Step 6b. The linked pairs of objectives and functional statements attributed to the applicable acceptable solutions in Supplementary Standard SA-1 may help clarify the reasons for the Division B Code provision.

Final Step
Acceptance or Refusal
and Document
Retention

Final Step, Acceptance or refusal of the application and document retention. We dealt with this subject in Module Five, The Permit Application and Issuance Process. More about the Final step after Step 10b.

SUMMARY OF APPLYING THE 2006 CODE USING THE ACCEPTABLE SOLUTIONS OF DIVISION B

- The Building Code Act is the authority for the enforcement of the Code.
- The scope of each Division is specified in Division A, Subsection 1.1.1.
- The application of each Part of Division B is specified in Division A, Subsection 1.1.2.
- The scope and application of the technical provisions of Division B, are usually specified at the beginning of each Section and Subsection of Division B.
- When the applicant intends to comply with Division B by complying with the acceptable solutions in Division B, the Plans Review activity is done, under the 2006 Code, exactly as it was done under the 1997 Code.

EQUIVALENTS THEN - ALTERNATIVE SOLUTIONS NOW

Alternative solutions are very similar to what equivalents were under the 1997 Code. For this reason, we will compare equivalents to alternative solutions. We will also look at Div. A, Clause 1.2.1.1.(1)(b) which authorizes the use of alternative solutions to comply with the provisions of Division B.

Step 1
Start
Receive Application

Step 1 Start, receive application conforming to:

- Div. C, Clauses 1.3.1.3.(5)(a) to (e) in the case of an application for a permit under Subsection 8.-(1) of the Act, [see Sentences 1.3.1.3.(6) to (9)]

or

 the Instrument of the Principal Authority, enacted under the authority of Section 7 of the BCA, in the case of an application for a change-of-use permit under Subsection 10,-(1) of the Act.

Step 2
Confirm compliance with other
Division C provisions

Step 2, Confirm compliance with other Division C provisions:

- Article 1.3.1.1., requirements for permits.
- Section 3.2., Qualifications of designer who is not an Architect or Professional Engineer
- Section 3.3, Qualifications of Person engaged in the business of constructing on site, installing, repairing, servicing, cleaning or emptying sewage systems, and
- Part 4 to identify the Ontario Regulation(s) under which the plans review and inspection activities will take place.

Step 3
Confirm method of compliance

Step 3. Confirm that the method of compliance with Division B is by using the *acceptable solutions* of Division B. [Div. A, Clause 1.2.1.1.1(1)(a)]

NOTA BENE:

Unless the applicant has submitted the documentation identified in Division C, Part 2, Section 2.1., supporting an alternative solution, proceed with the plans review for compliance with the acceptable solutions of Division B. In which case you would proceed to Step 4a.

Step 4a
Confirm compliance with applicable Division B provisions

Step 4a, Confirm compliance with the applicable Division B provisions. The plans review exercise is done the same way it was done under the 1997 Code. To identify the Parts of Division B that apply, consult Div. A, Subsection 1.1.2.



Final Step
Acceptance or Refusal and Document Retention

Step 5a. This step is optional. Consult linked pairs of functional statements and objectives. You will learn how to do this when we deal with Step 6b. The linked pairs of objectives and functional statements attributed to the applicable acceptable solutions in Supplementary Standard SA-1 may help clarify the reasons for the Division B Code provision.

Final Step. Acceptance or refusal of the application and document retention. We dealt with this subject in Module Five, The Permit Application and Issuance Process. More about the Final step after Step 10b.

SUMMARY OF APPLYING THE 2006 CODE USING THE ACCEPTABLE SOLUTIONS OF DIVISION B

- The Building Code Act is the authority for the enforcement of the Code.
- The scope of each Division is specified in Division A, Subsection 1.1.1.
- The application of each Part of Division B is specified in Division A, Subsection 1.1.2.
- The scope and application of the technical provisions of Division B, are usually specified at the beginning of each Section and Subsection of Division B.
- When the applicant intends to comply with Division B by complying with the acceptable solutions in Division B, the Plans Review activity is done, under the 2006 Code, exactly as it was done under the 1997 Code.

EQUIVALENTS THEN - ALTERNATIVE SOLUTIONS NOW

Alternative solutions are very similar to what equivalents were under the 1997 Code. For this reason, we will compare equivalents to alternative solutions. We will also look at Div. A, Clause 1.2.1.1.(1)(b) which authorizes the use of alternative solutions to comply with the provisions of Division B.

Before we examine the sample process for assessing *alternative* solutions, we will look at examples of equivalents under the 1997 Code and *alternative* solutions under Ontario's 2006 Objective-Based Code.

EXAMPLES OF PROPOSED EQUIVALENTS

Section 9 of the *Building Code Act* in tandem with Section 2.7. of the 1997 Code empowered Chief Building Officials and Registered Code Agencies to allow the use of equivalent materials, systems and building designs, not recognized by the Code, if in their opinion, the equivalent provided the level of performance that would be achieved by conforming to the requirements of the Code.

An example of a proposed equivalent material: a roofing material that did not conform to the material standards listed in Article 9.26.2.1.

An example of a proposed equivalent system: a wall system of straw bale construction.

An example of a proposed equivalent building design: a guard made out of plastic material which did not have a design basis in Section 4.3. of the Code.

EXAMPLES OF PROPOSED ALTERNATIVE SOLUTIONS

Under the 2006 Code, proposed *alternative solutions* will very likely be very similar to the types of equivalents that were proposed in the past with one notable exception; under the provisions of Div. A, Clause 1.2.1.1.(1)(b) building design is not restricted to Div. B, Part 4 Structural Design. The following are examples of possible proposed *alternative solutions*.

✓ Alternative solution for a material: an exterior wall covering that is not referenced in Section 9.27. Cladding.

- ✓ Alternative solution for a system: an assembly that is tested, for fire-resistance rating, to a standard that is not referenced in Div. B, Table 1.3.1.2. by way of Div. A, Section 1.5.
- ✓ Alternative solution for a building design: a theatre seating layout that has dead-end aisles more than 10 m long as regulated by Div. B, Sentence 3.3.2.4.(13).

In conclusion, an *alternative solution*, being a substitute for an *acceptable solution* under Division B, could be proposed for any product, material, component, design, system, equipment or procedure that is found in Division B of the 2006 Objective-Based Code.

Alternative solutions are not limited to new construction, alternative solutions may be proposed for renovations under Div. B, Part 11 and a change-of-use under Div. B, Part 10. Similarly, alternative solutions may be proposed for compliance alternatives listed in Tables 11.5.1.1.A. to 11.5.1.1.F of Division B.

NOTA BENE:

The 2006 Code does not deal with alternative measures. Alternative measures under the 1997 Code are now known as alternative solutions.

WHY ARE ALTERNATIVE SOLUTIONS PROPOSED?

The techniques of the construction industry, architecture, engineering and technology are always evolving and developing new ways of doing things. Building owners and Designers expect to be able to use new products and innovative technologies. At the same time, the residents of Ontario expect that the performance and suitability of a new technology will be verified prior to use.

A person proposing the use of an alternative solution does not have to provide a reason why the alternative solution is being proposed to the person having jurisdiction.

WHO PROPOSES ALTERNATIVE SOLUTIONS?

Alternative solutions can be proposed by an owner as an applicant for a permit or a holder of a permit or by a designer on behalf of the owner. An alternative solution is proposed when a building design, system or material is not recognized by the applicable acceptable solutions of Division B.

The proponent of an *alternative solution*, who is not an Architect or Professional Engineer must:

- have the qualifications set out in Section 3.2. of Division C,
 or
- the design activity must be exempt from registration under Sentences 3.2.4.1.(3) and (4) or qualification under Sentence 3.2.5.1.(2) of Division C.

NOTA BENE:

It is not the duty of the person having jurisdiction to develop and propose an *alternative solution* to help an applicant for a permit, a holder of a permit or a person to whom an order has been served.

WHAT IS THE BASIS FOR A PROPOSED ALTERNATIVE SOLUTION?

A review of Div. C, Section 2.1. indicates that proposed alternative solutions must be accompanied by documentation which we will call a Code Analysis. The Code Analysis will be examined in greater detail later in this Module.

TO WHO IS THE APPLICATION FOR PROPOSED ALTERNATIVE SOLUTIONS SUBMITTED?

Because the application for an *alternative solution* is similar to an application for a permit, Sentence 2.1.1.1.(1) of Division C requires the documentation for an *alternative solution* to be submitted to the CBO or the RCA having jurisdiction.

WHO IS THE PERSON HAVING JURISDICTION TO ASSESS AND ACCEPT OR REFUSE A PROPOSED ALTERNATIVE SOLUTION?

Clause 1.1-(6)(a) of the BCA informs us that it is the responsibility of the CBO or the Inspector who has the same powers and duties as the CBO in relation to sewage systems or plumbing to establish operational policies for the enforcement of the building code within the applicable jurisdiction.

Consequently, each Principal Authority may adopt specific policies and procedures for the submission and assessment of proposed alternative solutions and may designate Inspectors who are to conduct such assessments.

On the other hand, the RCA is required by Clause 3.4.3.3.(3)(c) of Division C to include procedures for the assessment of *alternative* solutions in their Quality Management Plan.

The person having jurisdiction to assess the *alternative solution* could the CBO, an Inspector, the RCA or a Person authorized by the RCA, as the case may be, who carries out the plans review activity. In all cases, the person having jurisdiction must have the necessary qualifications set out in Division C, Section 3.1. or 3.4., as the case may be.

Just like a CBO may seek advice about compliance with an applicable law before making a decision about the issuance of a permit, the person having jurisdiction may have to consult with a person who has special or expert knowledge in relation to a building or part thereof.

Just like a CBO in deciding about the issuance of a permit, the person having jurisdiction must not simply ratify a decision that was made by someone else.

There may be multiple parties involved in the evaluation of complex alternative solutions. For example, if an alternative solution involves a fire safety matter, a Principal Authority may require the Fire Department to be of assistance to the Building Department. In the case of a plumbing matter, the Building Department may require the assistance of the Engineering Department and the Health Unit. The level of involvement of agencies other than the Building Department may vary between Principal Authorities.

EXERCISE # 2 AN INTRODUCTION TO ALTERNATIVE SOLUTIONS

Deal with the questions in the ususal manner.

- To comply with the provisions of the Code as directed by Subsection 8.-(11) of the BCA, a Designer:
 - a) may use the alternative solutions in Division B
 - b) must use the alternative solutions in Division B
 - c) may use the acceptable solutions in Division B
 - d) must use the acceptable solutions in Division B

ORC	reference:				
000	Cicionoc.		_	 	

2.	An	ali	ternative	solu	tion:

- a) may achieve the level of performance required by the applicable acceptable solution in Division B
- b) must achieve the level of performance required by the applicable acceptable solution in Division B
- c) must exceed the level of performance required by the applicable acceptable solution in Division B
- d) may exceed the level of performance required by the applicable acceptable solution in Division C

OBC	reference:	

- 3. Ontario's 2006 Objective-Based Code has:
 - a) four categories of objectives
 - b) five categories of objectives
 - c) six categories of objectives
 - d) seven categories of objectives

- 4. In obtaining compliance with the technical provisions (acceptable solutions) of Division B, as directed by Subsection 8.-(11) of the BCA, a Designer:
 - a) may use alternative solutions
 - b) must use alternative measures
 - c) may use equivalents
 - d) must use alternative solutions

OBC reference:			

- 5. A proposal to use an *alternative solution* must be supported by documentation prescribed:
 - a) in the Code Analysis
 - b) by the CBO under the authority of the Building Code Act
 - c) Section 2.1 of Division C of the Code
 - d) the Instrument of the Principal Authority enacted under the authority of Section 7 of the *Building Code Act*

OBC reference:			
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STOP

OBTAINING COMPLIANCE WITH DIVISION B BY USING ALTERNATIVE SOLUTIONS

Div. A, Clause 1.2.1.1.(1)(b) makes it clear that *alternative* solutions are recognized as a method of complying with the technical provisions of Division B. The wording of the Clause makes it clear that the use of an *alternative* solution is not a way "to get out of Division B provisions" nor a "second best way to comply with Division B" it is a way to comply with Division B.

Div. A, Clause 1.2.1.1.(1)(b) and Div. C, Section 2.1. do not require a proponent to give a reason why the use of an *alternative* solution is being proposed instead of using an *acceptable solution*. However, the proponent must satisfy the person having jurisdiction by demonstrating that the use of a proposed *alternative solution* will:

achieve the level of performance required by the applicable acceptable solutions (of Division B) in respect of the objectives and functional statements attributed to the applicable acceptable solutions (of Division B) in Supplementary Standard SA-1.

[Div. A, Clause 1.2.1.1.(1)(b)]

We will now dissect Clause 1.2.1.1.(1)(b) of Division A and examine its component parts.

LEVEL OF PERFORMANCE

The alternative solution must:

achieve the level of performance required by the applicable acceptable solutions (of Division B) in respect of the objectives and functional statements attributed to the applicable acceptable solutions (of Division B) in Supplementary Standard SA-1.

[Div. A, Clause 1.2.1.1.(1)(b)]

In the 2006 Code, the level of performance of an *alternative* solution is to be measured against that of the *acceptable solution*. Under the 1997 Code, equivalents had to achieve the level of performance that would be achieved by conforming to the Code.

Every technical requirement of Division B whether it is a "prescriptive requirement" of a "performance requirement" achieves a benchmark level of performance. The benchmark level of performance can be thought of as the accomplishment of a material, system or building design under the acceptable solutions of Division B.

For example, the benchmark level of performance for windows in Division B, Part 9 buildings is found in Section 9.7. and Part 12.

By making Division B the point of reference from which the level of performance for *alternative solutions* is measured, the Code makes it clear that *alternative solutions* must be **at least as good as** the *acceptable solutions* of Division B.

Since the acceptable solutions of Division B are minimum provisions, providing a minimum level of performance, prescribed under the authority of Section 34 of the *Building Code Act*, for the construction of buildings, all *alternative solutions* must demonstrate compliance with the level of performance of the requirements and provisions of Division B, known as the *acceptable solutions*.

EVALUATION OF ALTERNATIVE SOLUTIONS

We have established that:

- the use of an alternative solution can achieve compliance with Division B.
- the benchmark for the evaluation of an alternative solution is the level of performance of the provisions of Division B which are minimum provisions.

Now, how do we know what to evaluate to determine the level of performance of the proposed *alternative solution*?

According to Div. A, Clause 1.2.1.1.(1)(b), compliance with Division B can be achieved by using an alternative solution that will:

achieve the level of performance required by the applicable acceptable solutions (of Division B) in respect of the objectives and functional statements attributed to the applicable acceptable solutions (of Division B) in Supplementary Standard SA-1.

The term "... in respect of the objectives and functional statements attributed to the applicable acceptable solutions (of Division B) in Supplementary Standard SA-1 can be condensed to "AREAS OF PERFORMANCE".

Consequently, there are two things to remember in the evaluation of alternative solutions.

Firstly, "... in respect of the objectives and functional statements ... in Supplementary Standard SA-1" means that the evaluation is limited to the "areas of performance" that are defined in the SA-1 AND NOT ALL OF THE objectives and functional statements that are respectively listed in Tables 2.2.1.1. and 3.2.1.1. of Division A.

Secondly, "... in respect of the objectives and functional statements attributed to the applicable acceptable solution in Supplementary Standard SA-1." means that only the pairs of objectives and functional statements that are linked to the Division B provisions in Supplementary Standard SA-1, are used in determining the "areas of performance" of the alternative solution.

For example, if an alternative framing system was proposed, one would look at the *objectives* and *functional statements* linked (attributed) to framing requirements. The *objectives* and *functional statements* attributed (linked) to ventilation would not be applicable because they are not in the "areas of performance" provided by the linked pairs of *objectives* and *functional statements* in SA-1.

NOTA BENE:

Each Division B technical provision (acceptable solution) is linked to at least one objective and one functional statement called a pair. The linked pairs of objectives and functional statements define the "areas of performance" of the proposed alternative solutions.

Sum Equivalents (1997 Code)	mary Alternative Solutions (2006 Code)
Permitted under Section 9 of the BCA and 2.7. of the Code	Permitted under Division A, Clause 1.2.1.1.(1)(b)
Must meet the level of performance that would be achieved by conforming to the Code	Must meet the level of performance of Division B provisions
Minimal framework for evaluation	Evaluated using prescribed objectives and functional statements
Allowed by CBO or RCA if in the opinion	Evaiuated by person having jurisdiction and may be accepted or refused

OBJECTIVES, FUNCTIONAL STATEMENTS AND ATTRIBUTION TABLES

OBJECTIVES

Objectives describe the overall goals that the provisions of Division B intend to achieve. The seven categories of *objectives* on page 2 of this Module and in Table 2.2.1.1. of Division A define the boundaries of the Code; and, for training purposes we will call them top-level *objectives*.

It is recommended that you memorize the seven categories of toplevel *objectives* since they will help you to quickly identify the ultimate purpose of a specific Code provision. For purposes of training, there are second and third-level *objectives* under most of the top-level *objectives*. For example, see OS1, a second-level *objective* and OS1.1 a third-level *objective*.

NOTA BENE:

The is no hierarchy in value between a top, second or third-level objective. An objective is an objective, is an objective.

FUNCTIONAL STATEMENTS

Functional statements describe the functions that a building or an element of a building must perform to fulfill the objectives. All the functional statements are listed in Table 3.2.1.1. of Division A. They are grouped by subject matter but not presented in a particular order. There are intentional gaps in the numbering system of functional statements to allow for the insertion of other functional statements in the future.

ATTRIBUTION TABLES

The Attribution Tables of Supplementary Standard SA-1 provide the link between the applicable *acceptable solutions* of Division B and the pairs of *objectives* and *functional statements*. In SA-1, the Table number matches the Division B Part number (Tables 3 to 12 for Parts 3 to 12).

For example, in Table 9 of Supplementary Standard SA-1, the linked pairs of *functional statements* and *objectives* for Sentence 9.8.4.2.(1), "Dimensions for Risers", are

[F30 - OS3.1] and [F10 - OS3.7]

Functional statement F30: to minimize the risk of injury to persons as a result of tripping, slipping, falling contact, drowning or collision.

Functional statement F30 is associated with objective OS3.1.

Objective OS3.1: to limit the probability that, as a result of the design or construction of a building, a person in or adjacent to the building will be exposed to an unacceptable risk of injury due to hazards caused by tripping, slipping, falling, contact, drowning or collision.

Functional statement F10: to facilitate the timely movement of persons to a safe place in an emergency.

Functional statement F10 is associated with objective OS3.7.

Objective OS3.7: to limit the probability that, as a result of the design or construction of a building, a person in or adjacent to the building will be exposed to an unacceptable risk of injury due to hazards caused by persons being delayed in or impeded from moving to a safe place during an emergency.

EXERCISE #3 - OBJECTIVES AND FUNCTIONAL STATEMENTS ATTRIBUTED TO THE ACCEPTABLE SOLUTIONS IN DIVISION B

To complete this exercise, you will need to consult Supplementary Standard SA-1. Standard procedure apply.

- The linked pairs of objectives and functional statements attributed to the provisions of Part 6 in Division B can be found in:
 - a) Table 2.2.1.1. of Division A
 - b) Table 3.2.1.1. of Division A
 - c) Tables 2.2.1.1.and 3.2.1.1. of Division A
 - d) Table 6 of Supplementary Standard SA-1

OBC references:		
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- 2. List the *objectives* and *functional statements* that are linked with the following provisions of Division B.
 - a) Div. B, Sentence 3.3.4.4.(6), "Egress from Dwelling Units"
 - b) Div. B, Sentence 3.7.4.14.(1), "Grab Bar Installation"
 - c) Div. B, Sentence 5.2.1.1.(2), "Interior Environmental Loads"

STOP

DETERMINATION OF "AREAS OF PERFORMANCE"

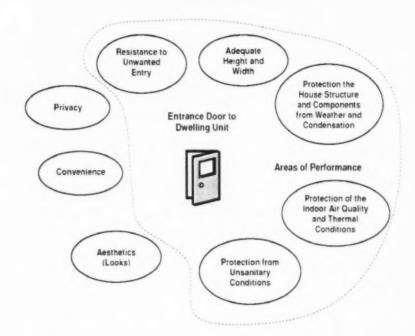
You have previously been informed that term "... in respect of the objectives and functional statements attributed to the applicable acceptable solutions in Supplementary Standard SA-1" from Div. A, Clause 1.2.1.1.(1)(b) has been condensed to "areas of performance".

Imagine an alternative solution that involves an entrance door to a dwelling unit. There are many factors that could be evaluated when comparing entrance doors, as shown in the diagram that follows.

Typical functions that an entrance door to a dwelling unit provides that could be used in the assessment of its performance.



When evaluating an alternative solution, the Code by way of Supplementary Standard SA-1 tells you the "areas of performance" that are to be evaluated. SA-1 narrows the "areas of performance" to **only those functions** that **address the objectives** of the provisions of Division B of the Code. These "areas of performance" are derived from the pairs of objectives and functional statements" that are linked to the acceptable solutions (technical requirement/provision) of Division B. For the example of the entrance door to a dwelling unit, factors such as privacy, convenience and appearance are not regulated by the Code. Consequently these factors would not be part of the assessment of its performance.



DEFINING THE "AREAS OF PERFORMANCE"

Every technical provision of Division B has at least one "area of performance" that is defined by one linked *functional statement* and one linked *objective* acting as a pair. For example, the requirement of Div. B, Sentence 9.6.8.8.(1) to have a door viewer, transparent glazing in the door or a sidelight at main entrance doors to dwelling units is linked to [F35 - OS4.2] the pair of *functional statement* and *objective*

- F35: to facilitate the identification of potential intruders
- OS: Safety
- OS4: Resistance to Unwanted Entry
- OS4.2: to limit the probability that, as a result of the design or construction of a building, a person in the building will be exposed to an unacceptable risk of injury due to the building's low level of resistance to unwanted entry caused by occupants being unable to identify potential intruders as such

NOTA BENE:

A functional statement cannot be used on its own and an objective cannot be used on its own.

Pairs are required to determine the "areas of performance" because the pairs indicate what function the alternative solution needs to perform and the reason why.

HOW TO MAKE PAIRS FROM THE ATTRIBUTION TABLES

The Attribution Tables in Supplementary Standard SA-1 list the functional statements and objectives that are linked to the provisions of Division B. The pairs are made by grouping together each of the functional statements with each of the objectives within the square brackets.

Some attributions are quite lengthy, see the *objectives* and *functional statements* that are attributed to Div. B, Sentence 9.3.1.7.(1) "Concrete Mixes for Site-Batched Concrete". The "areas of performance" would be made up by separating the

strings of functional statements and objectives into separate pairs.

For example, Div. B, Sentence 9.6.7.2.(1) provides as a general rule that metal frames for doors, for glazing in doors, and for sidelights for doors must incorporate a thermal break.

Table 9 of Supplementary Standard SA-1 has the following entry for Sentence 9.6.7.2.(1), "Required Thermal Breaks": [F63-OH1.1, OH1.2] [F63-OS2.3] [F131-OR2].

The task is to separate each of these attributions into [FS-O] pairs.

[F63 - OH1.1, OH1.2] = [F63 - OH1.1] and [F63 - OH1.2]

[F63 - OS2.3] and [F131 - OR2] are already in pairs.

Sentence 9.6.7.2.(1) has four "areas of performance" that need to be evaluated in determining the level of performance of an alternative solution for this provision.

[F63 - OH1.1], [F63 - OH1.2], [F63 - OS2.3] and [F131 - OR2]

EXERCISE # 4 - HOW TO MAKE [FS - O] PAIRS FROM THE ATTRIBUTION TABLES TO DETERMINE THE "AREAS OF PERFORMANCE"

- 1. List the pairs of *objectives* and *functional statements* that are linked with the following provisions of Division B.
 - a) Div. B, Sentence 3.3.4.4.(6), "Egress from Dwelling Units"
 - b) Div. B, Sentence 3.7.4.14.(1), "Grab Bar Installation"
 - c) Div. B, Sentence 5.2.1.1.(2), "Interior Environmental Loads"

STOP

DESCRIBING THE "AREAS OF PERFORMANCE" IN SIMPLE TERMS

A pair of attributes answers the question, "What does the alternative solution need to do and why?" The reason for the function will not be clear if the objective is not part of the paired statement.

In simple terms, each "area of performance" can be stated as:

"The alternative solution must <functional statement> for <objective> reasons so that ..."

- For Sentence 9.6.7.2.(1), "Required Thermal Breaks": [F63 OH1.1] [F63 OH1.2] [F63 OS2.3] [F131 OR2]
- For [F63-OH1.1], the "area of performance" can be simply stated: The alternative solution must limit moisture condensation for Health Indoor Conditions reasons so that a person will not be exposed to an unacceptable risk of illness caused by inadequate indoor air quality.
- For [F63-OH1.2], the "area of performance" can be simply stated: The alternative solution must limit moisture condensation for Health - Indoor Conditions reasons so that a person will not be exposed to an unacceptable risk of illness caused by inadequate thermal comfort.
- For [F63-OS2.3], the "area of performance" can be simply stated: The alternative solution must limit moisture condensation for Safety Structural Safety reasons so that a person will not be exposed to an unacceptable risk of injury caused by damage to or deterioration of building elements.
- For [F131-OR2], the "area of performance" can be simply stated: The alternative solution must limit excessive energy consumption for Resource Conservation Energy Conservation reasons so that the capacity of the infrastructure supporting the use of the resource will not be exposed to an unacceptable risk of being exceeded caused by the consumption of energy.

WHY ARE THERE SO MANY [FS - O] PAIRS?

Often there can be more than one reason for a certain building function. For example, Sentence 9.6.7.2.(1), the requirement for thermal breaks in doors and sidelights separating heated space from unheated space or the exterior has two functions and four *objectives* as follows:

- F63: to limit moisture condensation, and
- F131: to limit excessive energy consumption
- OH1.1: to reduce risk of illness caused by inadequate indoor air quality
- OH1.2: to reduce risk of illness caused by inadequate thermal comfort
- OS2.3: to reduce risk of injury caused by damage to or deterioration of building elements
- OR2: to reduce the risk that the capacity of the infrastructure will be exceeded by the consumption of energy

If the *objective* for structural safety was missing, the evaluation of the *alternative solution* would not need to consider how thermal breaks affect structural safety. Thermal breaks that are adequate for indoor air quality, thermal comfort and energy conservation may not be adequate for structural safety. By having all four *objectives*, or reasons for the function, all four issues must be considered in the evaluation of an *alternative solution*.

NOTA BENE:

Application Sentence 9.6.7.1.(1) and exception Sentence 9.6.7.2.(2) have neither a function nor an *objective* because they are not technical requirement; they merely identify which doors and sid€ lights require thermal breaks.

In summary, the "area of performance" of the alternative solution is derived from the pairs of functional statements and objectives that are linked to the acceptable solutions which are the technical requirements/provisions of Division B. The linked pairs state what needs to be done (the function) and why (the objective).

ROLES AND RESPONSIBILITIES IN EVALUATING ALTERNATIVE SOLUTIONS

The person having jurisdiction is the Chief Building Official, an Inspector, the Registered Code Agency or a Person authorized by the RCA, as the case may be, who has the qualifications and who is responsible to carry out the plans review activities.

The person having jurisdiction is responsible for the assessment of the Code Analysis and to confirm the proposed *alternative* solution when it meets the requirements of Division A, Clause 1.2.1.1.(1)(b) and to refuse it when it does not. The word "confirm" is used in the process for actions by the person having jurisdiction.

The applicant is responsible for providing a Code Analysis (documentation) in support of the proposed *alternative solution*.

The person having jurisdiction and the applicant may need to discuss certain aspects of the proposed *alternative solution* during the assessment process. Similarly the person having jurisdiction may need to consult with others during the assessment process.

EVALUATING A PROPOSED ALTERNATIVE SOLUTION

Step 1, receive application conforming to:

- Div. C, Clauses 1.3.1.3.(5)(a) to (e) in the case of an application for a permit under Subsection 8.-(1) of the Act, [see Sentences 1.3.1.3.(6) to (9)]

or

 the instrument of the Principal Authority in the case of an application for a change-of-use permit under Subsection 10.-(1) of the Act.

Step 2, Confirm compliance with other Division C provisions:

- Article 1.3.1.1., requirements for permits,
- Subsection 2.1.1., documentation of alternative solutions

Step 1 Start Receive Application



ROLES AND RESPONSIBILITIES IN EVALUATING ALTERNATIVE SOLUTIONS

The person having jurisdiction is the Chief Building Official, an Inspector, the Registered Code Agency or a Person authorized by the RCA, as the case may be, who has the qualifications and who is responsible to carry out the plans review activities.

The person having jurisdiction is responsible for the assessment of the Code Analysis and to confirm the proposed *alternative* solution when it meets the requirements of Division A, Clause 1.2.1.1.(1)(b) and to refuse it when it does not. The word "confirm" is used in the process for actions by the person having jurisdiction.

The applicant is responsible for providing a Code Analysis (documentation) in support of the proposed *alternative solution*.

The person having jurisdiction and the applicant may need to discuss certain aspects of the proposed *alternative solution* during the assessment process. Similarly the person having jurisdiction may need to consult with others during the assessment process.

EVALUATING A PROPOSED ALTERNATIVE SOLUTION

Step 1, receive application conforming to:

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 the instrument of the Principal Authority in the case of an application for a change-of-use permit under Subsection 10.-(1) of the Act.

Step 2, Confirm compliance with other Division C provisions:

- Article 1.3.1.1., requirements for permits,
- Subsection 2.1.1., documentation of alternative solutions

Step 1 Start Receive Application

Step 2
Confirm compliance to other Division C provisions

Step 2, continued Confirm compliance to other Division C provisions

- Section 3.2., Qualifications of designer who is not an Architect or Professional Engineer
- Section 3.3, Qualifications of Person engaged in the business of constructing on site, installing, repairing, servicing, cleaning or emptying sewage systems, and
- Part 4 to identify the Ontario Regulation(s) under which the plans review and inspection activities will take place.

A detailed review of the documentation supporting the proposed *alternative solution* will take place in later steps. For purposes of training, we will call the documentation identified in Subsection 2.1.1. of Division C a Code Analysis. The Code Analysis supporting the use of an *alternative solution* must:

- 1. be submitted to the CBO or RCA having jurisdiction, [Div. C, Sentence 2.1.1.1.(1)]
- identify the applicable objectives, functional statements and acceptable solutions, [Div. C, Clause 2.1.1.1.(1)(a)]
- establish on the basis of past performance, tests described in Article 2.1.1.2. or other evaluation that the alternative solution will achieve the level of performance required by the applicable acceptable solutions of Division B, under Div. A, Clause 1.2.1.1.(1)(b).
 [Div. C, Clause 2.1.1.1.(1)(b)]
- 4. include information about:
 - relevant assumptions.
 - limiting or restricting factors,
 - testing procedures.
 - studies or building performance parameters, and
 - any commissioning, operational and maintenance requirements.
 - [Div. C, Sentence 2.1.1.1.(2)]
- identify the person or persons taking responsibility for the design of the alternative solution, by way of Schedule 1 in the case of a permit under Section 8 of the Act, by the means specified in the Instrument of the Principal Authority for a change-of-use permit under Section 10 of the Act or identify the proposing Architect or Professional Engineer. [Div. C, Sentence 2.1.1.1.(1)]

BY-LAWS, RESOLUTIONS AND REGULATIONS UPDATE

The portion of your Instrument, enacted under the authority of Section 7 of the *Building Code Act*, that dealt with equivalents will need to be amended to deal with *alternative solutions*.

THE APPLICATION FORM FOR A PROPOSED ALTERNATIVE SOLUTION

Neither the *Building Code Act* nor the 2006 Code provide an application form for a proposed *alternative solution*. A sample application for a proposed *alternative solution* is on the next page.

A CHECKLIST TO REVIEW THE APPLICATION FOR AN ALTERNATIVE SOLUTION

A Principal Authority may develop a checklist for reviewing that the proposed *alternative solution* is supported by the documentation identified in Div. C, Section 2.1. and the other requirements of Division C.

A sample checklist on page 31 shows the following:

- the mandatory documentation from Division C, Sentences 2.1.1.1.(1) and (2), as items 1 to 5,
- and
- optional information that may assist the person having jurisdiction in the evaluation of the alternative solution.

Step 3, Confirm that the method of compliance with Division B is by using alternative solutions.

[Div. A, Clause 1.2.1.1.(1)(b)]

Step 3
Confirm method of Compliance

The proposed *alternative solution* involves a laundry exhaust duct that is connected to a bathroom exhaust duct before discharging to the outdoors. We will now use this case study to examine the steps of the sample evaluation process for *alternative solutions*.

Step 2, continued Confirm compliance to other Division C provisions

- Section 3.2., Qualifications of designer who is not an Architect or Professional Engineer
- Section 3.3, Qualifications of Person engaged in the business of constructing on site, installing, repairing, servicing, cleaning or emptying sewage systems, and
- Part 4 to identify the Ontario Regulation(s) under which the plans review and inspection activities will take place.

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- be submitted to the CBO or RCA having jurisdiction, [Div. C, Sentence 2.1.1.1.(1)]
- identify the applicable objectives, functional statements and acceptable solutions,
 [Div. C, Clause 2.1.1.1.(1)(a)]
- establish on the basis of past performance, tests described in Article 2.1.1.2. or other evaluation that the alternative solution will achieve the level of performance required by the applicable acceptable solutions of Division B, under Div. A, Clause 1.2.1.1.(1)(b).
 [Div. C, Clause 2.1.1.1.(1)(b)]
- 4. include information about:
 - relevant assumptions,
 - limiting or restricting factors,
 - testing procedures,
 - studies or building performance parameters, and
 - any commissioning, operational and maintenance requirements.
 - [Div. C, Sentence 2.1.1.1.(2)]
- 5. identify the person or persons taking responsibility for the design of the alternative solution, by way of Schedule 1 in the case of a permit under Section 8 of the Act, by the means specified in the Instrument of the Principal Authority for a change-of-use permit under Section 10 of the Act or identify the proposing Architect or Professional Engineer. [Div. C, Sentence 2.1.1.1.(1)]

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- the mandatory documentation from Division C, Sentences 2.1.1.1.(1) and (2), as items 1 to 5,
- and
- optional information that may assist the person having jurisdiction in the evaluation of the alternative solution.

Step 3. Confirm that the method of compliance with Division B is by using alternative solutions.

[Div. A, Clause 1.2.1.1.(1)(b)]

Step 3
Confirm method of
Compliance

The proposed *alternative solution* involves a laundry exhaust duct that is connected to a bathroom exhaust duct before discharging to the outdoors. We will now use this case study to examine the steps of the sample evaluation process for *alternative solutions*.

SAMPLE APPLICATION FOR A PROPOSED ALTERNATIVE SOLUTION

Project location								
Proponent informatio	Proponent information: (Name, mail and e-mail addresses, telephone and fax numbers)							
Proponent qualifications: (BCIN/Exemption)								
Consultant information: (if any, Name, mail and e-mail addresses, telephone and fax numbers)								
	The state of the s							
Consultant qualificati	ons: (BCIN/Exen	nption)						
Summary of Propose								
Applicable Division B	Provisions							
Code Reference	Summary of C	nde Provision						
Code Melerence	Summary or o	ode i Tovision						
Linked pairs of functi	ional statements	and objective	es and Level of Performance					
Code Reference	Functional	Objective		ablished in Code Analysis				
Code Reference	Statement	Objective	Division B Provision	Proposed Alternative Solution				
			See page	See page				
Surrentine Box	4-4		See page	See page				
Supporting Documen	itation							
Title of Document		Author of Do	cument					

Sample Checklist for Review of Application for Alternative Solution For Use by a Principal Authority or a Registered Code Agency

Req	equired with Application for a Proposed Alternative Solution							
1	A description of the proposed alternative solution [Div. A, 1.2.1.1.(1)(b)]							
2	Proponent's name, company, address, contact information							
3	Designer's qualifications appear on Schedule 1 or The designer is exempted by virtue of :							
4 0		ode Analysis [documentation under Div. C, Article 2.1.1.1.] establish on the basis of past performance, tests described in Div. C, Article 2.1.1.2., or other evaluation that the proposed alternative solution will achieve the level of performance required under Division B, by way of Div. A, Article 1.2.1.1.						
	а	Identification of applicable Division B provisions (acceptable solutions)						
	b	Identification of applicable linked pairs of objectives and functional statements						
	С	An evaluation of the level of performance of the applicable Division B provisions						
	d	An evaluation of the level of performance of the proposed alternative solution						
	е	Identification of any assumptions, limiting or restricting factors						
1	f	Identification of testing procedures, engineering studies, building performance parameters, etc to support the assessment for compliance						
5	cor	ormation concerning any special maintenance or operation requirements, including mmissioning, necessary for the integrity of the <i>alternative solution</i> after construction complete						
Opti	iona	al Items That Would be Helpful in the Review of the Alternative Solu	tion					
6	A list of submitted documents These could include a concept report, calculations, fire modelling, test reports, precedents, fire scenario evaluation, alternate Codes and Standards, drawings, etc							
7	AI	ist of applicable sections of referenced documents (standards)						
8	Ré	sumé of Designer with details of qualifications						
9	Ot	her: (specify)						

Step 4b. Confirm Applicable Division B Provisions

Step 4b
Confirm Applicable
Division B Provisions

According to Division A, Clause 1.2.1.1.(1)(b) and Division C, Clause 2.1.1.1.(1)(b) the Code Analysis (documentation) must demonstrate that the proposed *alternative solution* will provide the level of performance required by Division B. This requires the applicant to identify the **applicable Division B provisions**. It is the responsibility of the person having jurisdiction to verify and confirm that these are correct or lacking.

WHAT DOES "APPLICABLE" MEAN?

The word <u>applicable</u> is used because not all provisions in Division B apply to the evaluation of a particular <u>alternative solution</u>. More specifically, when an <u>alternative solution</u> is proposed, the proponent must identify the Code provision of Division B that is not being complied with. For example, consider a proposed access route for fire department use that has a 110 m dead-end portion with no turnaround facilities. The applicable Division B provision is Clause 3.2.5.6.(1)(f):

- (1) A portion of a roadway or yard provided as a required access route for fire department use shall,...
 - (f) have turnaround facilities for any dead-end portion of the access route more than 90 m long...

RELATED APPLICABLE PROVISIONS

Some proposed *alternative solutions* will only have one or two <u>applicable</u> provisions from Division B. Other proposed *alternative solutions* will have several <u>applicable</u> Division B provisions because of related issues.

Consider a proposed *alternative solution* that involves exterior sheathing for a house. The <u>applicable</u> provisions will be from Subsection 9.23.16., "Wall Sheathing". If the wall sheathing also functions to provide bracing, related provisions from Article 9.23.10.2.. "Bracing and Lateral Support" will also be applicable.

Step 4b, Confirm Applicable Division B Provisions

Step 4b
Confirm Applicable
Division B Provisions

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NOTA BENE:

ALL of the Division B provisions that are related to the proposed *alternative solution* must be identified and confirmed. These become the "set" of applicable provisions that must then be analysed. If any are missing, the application is incomplete.

MULTIPLE DESIGN AND COMPLIANCE OPTIONS IN DIVISION B

What must be done when Division B offers multiple design options or multiple compliance options for certain elements of a building?

For example, Part 9 offers many choices for roofing, cladding and interior wall finish materials:

- roofing materials such as asphalt shingles, wood shingles, sheet metal, etc ...)
- cladding such as vinyl siding, stucco, lumber siding, etc ..., and
- interior wall finishes such as gypsum board, plywood finish, wall tile finish, etc ...

For each roofing, cladding and interior wall finish material, there is a specific "set" of Division B provisions.

Similarly, Division B sometimes offers different options in complying with a provision. For example, there are up to four ways to comply with the requirements of Sentence 3.3.1.7.(1), "Protection on Floor Areas with a Barrier-Free Path of Travel":

- provide an elevator with the protection of an elevator for use by Fire Fighters,
- or
- 2. divide the floor area in two or more fire compartments,
- or
- in residential occupancies, provide a barrier-free accessible balcony,
- or
- 4. sprinkler the building.

Although each design option provides a different level of performance, all comply with Division B, Sentence 3.3.1.7.(1).

To demonstrate that the level of performance of an *alternative* solution is at least equivalent to that of the <u>applicable</u> Division B provisions, the proposed *alternative* solution must possess the necessary characteristics to perform its intended function.

The context is important. When a component is part of an overall system, the *objectives* of the entire system must be considered. For example, if an alternative roofing material is proposed, the applicant must demonstrate that the entire roofing assembly will achieve the intended purpose and related functions described in Section 9.26., "Roofing".

In the case of alternative roofing materials, the Division B provisions is at a higher level than the materials standards referenced in Sentence 9.26.2.1.(1). The proposed *alternative solution* for roofing must perform the function "<u>at least as well as</u>" one of the prescribed options of the provisions of Section 9.26. For example, it is commonly understood that asphalt shingles are expected not to ignite or melt in hot sun and concrete roof tiles are expected not to crack due to freeze-thaw cycles.

EXERCISE # 5 - CONFIRM THE APPLICABLE DIVISION B PROVISIONS

A Designer intends to submit an alternative solution where a laundry drying equipment exhaust duct will be connected to bathroom exhaust duct before discharging to the outdoors
Identify the applicable Division B provision.



Step 5b
Check Databases or
Previously Accepted
Alternative Solutions
(optional step)

Step 5b, Check Databases or Previously Accepted *Alternative Solutions* (this is an optional step)

Here, the term "database" is used in a generic way to mean BMEC Authorizations, Rulings by the Minister and the Building Code Commission that are available on the Building Code Website.

NOTA BENE

No national, provincial or territorial registry of accepted alternative solutions exists as of July 2007. A Principal Authority may have a database of previously accepted equivalents and alternative solutions.

If the database contains a similar case, verify its applicability against the proposed *alternative solution* by comparing:

- building size
- building occupancy
- · conditions of acceptance
- other allied or extraneous factors

The database solution may provide guidance for the assessment of a proposed *alternative solution* and support the decision of the person having jurisdiction. Some *alternative solutions* may involve the use of a CCMC evaluation report or the use of a proprietary or listed product or system.

The use of a BMEC Authorization or a Ruling by the Minister is not an *alternative solution*. Their use is deemed by Subsection 28.-(5) and 29.-(6) respectively, not to be a contravention of the provisions of the building code. Consequently, BMEC Authorizations and Rulings by the Minister are considered to be *acceptable solutions*.

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Step 6b
Confirm Applicable
Objectives and
Functional Statements

Step 6b, Confirm Applicable Objectives and Functional Statements

WORDING AND FORMAT OF OBJECTIVES

The wording may seem complicated at first, but each *objective* is constructed in accordance with a standard format.

"An *objective* of this Code is to limit the probability that / as a result of the design or construction of a building / a person in or adjacent to a building or part of it / will be exposed to an unacceptable risk of / damage or loss of use / caused by / due to / fire / structural failure. We will break down the wording of the *objectives* into key phrases to understand their meaning.

PURPOSE OF OBJECTIVES

The phrase, "...to limit the probability that ..." emphasizes that the Code is meant to limit risk. The Code is not intended to eliminate risk since the provisions of the Code cannot totally prevent undesirable things from happening. For example, the provisions of the Code that address the dimensions of stairs are intended to limit the risk of a person tripping or falling on the stairs. If the Code was to eliminate the risk of a person tripping or falling on stairs, stairs would not be permitted by the Code.

WHEN DO OBJECTIVES APPLY?

"An objective of this Code is to limit the probability that, as a result of the design or construction of a building ...". The text of each objective indicates the circumstances when it applies. This often includes "...the design or construction of a building ...", for the objective of Environmental Integrity (OE) it includes "... the design, construction or operation of a building ..." and for the objective of Conservation of Buildings (OC) it includes (... the extension, material alteration or repair of an existing building or a change in use of an existing building ..."

Step 6b
Confirm Applicable
Objectives and
Functional Statements

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Attribution Tables 3 to 12 in Supplementary Standard SA-1 tell us which *objectives* are linked to a particular Division B provision. Only the *objectives* that are linked (attributed) to the applicable *acceptable solutions* (technical provisions or requirements) of Division B need to be considered in the assessment of *alternative solutions*.

WHO OR WHAT IS TO BE PROTECTED BY THE OBJECTIVES

"An objective of this Code is to limit the probability that, as a result of the design or construction of a building, a person in or adjacent to the building ..."

Objectives clearly specify who or what is to be protected by the provisions of Division B of the Code, by specifying whether **persons** or **things** are to be protected. A review of Table 2.2.1.1. of Division A identifies who or what is to be protected; namely:

- a person in the building
- · a person adjacent to the building
- the public
- a person with a physical or sensory disability
- the building
- the building or part of it
- adjacent buildings
- a natural resource
- water resources
- the natural environment

NOTA BENE:

Building contents (personal property) and animals are not included in the list of who and what is to be protected.

FROM WHAT RISKS ARE THE WHO AND THE WHAT TO BE PROTECTED FROM?

"An objective of this Code is to limit the probability that, as a result of the design or construction of a building, a person in or adjacent to the building will be exposed to an unacceptable risk of ..."

In the case of OS Safety *objectives*, persons are to be protected from: "... an unacceptable risk of injury ...".

In the case of OH Health *objectives*, persons are to be protected from: "... an unacceptable risk of illness ...",

- "... an unacceptable level of privacy", and
- "... from being unable to experience a view to the outdoors".

In the case of OA Accessibility objectives, a person with a physical or sensory disability is to be protected from being impeded from:

- "... accessing or using the building or its facilities",
- "... accessing the building or circulating within it", and
- "... using the building's facilities".

In the case of OP Fire, Structural, Water and Sewage Protection of Buildings *objectives*, a building, part of it or adjacent buildings are to be protected from:

- "... an unacceptable risk of loss of use ...",
- "... an unacceptable risk of damage ...",
- "... an unacceptable risk of damage or loss of use ...", and
- "... an unacceptable risk of structural damage ...".

In the case of OR Resource Conservation *objectives*, a natural resource and water resources are to be protected from:

- "... an unacceptable risk of depletion ...", or
- "... an unacceptable risk that the capacity of the infrastructure supporting the use of the resource will be exceeded".

In the case of the OE Environmental Integrity *objective*, the natural environment is to be protected from:

"... an unacceptable risk of degradation".

In the case of OC Conservation of Buildings *objective*, an existing building is to be protected from:

"... not being conserved".

As previously mentioned, the Provisions of the Code are not intended to eliminate all risks. Even when all applicable Code provisions have been complied with, there is still a residual risk that something bad might happen. For example, a person may still trip and fall on stairs that are designed and constructed in accordance with the provisions of Division B. However, the residual level of risk is the risk that society as a whole deems to be acceptable.

THE CAUSES OF RISKS ADDRESSED BY THE OBJECTIVES

A review of Table 2.2.1.1. of Division A reveals that the causes of the risks are defined in the second and third level *objectives*.

"An objective of this Code is to limit the probability that, as a result of the design or construction of a building, a person in or adjacent to the building will be exposed to an unacceptable risk of injury due to or caused by ..."

In the case of OS, Safety — Fire Safety *objectives*, the cause of the risk is:

- OS1 "... due to fire.",
- OS1.1 "... due to fire caused by fire and explosion.",
- OS1.2 "... caused by fire or explosion impacting areas beyond its point of origin.",
- OS1.3 "... due to fire caused by the collapse of physical elements due to a fire or explosion.",
- OS1.4 " ... due to fire caused by fire safety systems failing to function as expected.", and
- OS1.5 "... due to fire caused by persons being delayed in or impeded from moving to a safe place during a fire emergency".

You get the idea, there is no need to identify the cause of the risk of each *objective*. We can conclude that the *objectives* are qualitative and not quantitative, are stated in very broad terms and identify:

- the goals that the provisions of Division B are intended to achieve,
- the specific aspect of that overall goal that is being addressed.
- who or what is being protected, and
- from what risk.

There are seven top-level or Category of *Objectives* in Ontario's 2006 Objective-Based Building Code:

- OS Safety,
- OH Health,
- OA Accessibility,
- OP Fire, Structural, Water and Sewage Protection of Buildings,
- OR Resource Conservation,
- OE Environmental Integrity, and
- OC Conservation of Buildings.

Second-level *objectives* more specifically describe what the Code deals with. For example, the Code deals with these specific aspects of Health:

- OH1 Health Indoor Conditions.
- OH2 Health Sanitation.
- OH3 Health Noise Protection,
- OH4 Health Vibration and Deflection Limitation,
- OH5 Health Hazardous Substances Containment,
- OH6 Health Privacy, and
- OH7 Health View to the Outdoors

The third-level *objectives* define the cause of the unacceptable risk. For example, the causes of unacceptable risk of illness related to Health — Indoor Conditions are:

OH1.1 inadequate indoor air quality,
OH1.2 inadequate thermal comfort, and

OH1.3 contact with moisture.

NOTA BENE: A top-level *objective* describes the goal of the Code.

A second-level *objective* describes the aspect of the *objective*.

A third-level *objective* describes the cause of the illness or injury that the who and the what need protection from.

FUNCTIONAL STATEMENTS

Functional statements are listed in Division A, Part 3, Table 3.2.1.1. Functional statements describe the conditions in the building that help to satisfy the objectives. Functional statements answer the question: "What is the building, material, system or design supposed to accomplish?" Functional statements are specific short statements. Just like objectives, functional statements are qualitative, not quantitative, and cannot be used on their own to design a building or a component part thereof.

There are intentional gaps in the alpha-numerical numbering system of *functional statements* in Table 3.2.1.1. of Division A. This is to allow for the insertion of other *functional statements* in the future. In said Table 3.2.1.1., the *functional statements* are organized in groups covering similar issues. For example, *functional statements* F20 to F23 deal with structural issues and F40 to F46 deal with health issues.

WORDING AND FORMAT OF FUNCTIONAL STATEMENTS

The wording of *functional statements* follows a standard format that makes a *functional statement* easy to identify. Every *functional statement* starts with a verb.

Verbs such as "to eliminate", "to stop" and "to prohibit" <u>are never used</u> in *functional statements*. You will recall that if the Code wanted to eliminate all slips and falls in stairs, it would have to prohibit the use of stairs in buildings.

The provisions of the Code are to minimize risk; consequently, the following terms are used in the wording of *functional statements*.

- to minimize
- to maintain
- to facilitate
- to notify
- to provide

- to limit
- to resist
- to retard
- to support
- to control

EXERCISE #6 - FUNCTIONAL STATEMENTS AND OBJECTIVES

Deal with the questions in the usual way. Standard procedures apply.

- List the pairs of objectives and functional statements that are linked to Clause 6.2.3.8.(7)(a) of Division B.
- 2. For Clause 6.2.3.8.(7)(a), state the "area of performance".

STOP

Step 7b Confirm Level of Performance of Applicable Division B Provision(s) **Step 7b**, Confirm Level of Performance of Applicable Division B Provisions (*Acceptable Solutions*)

A reading of Div. A, Clause 1.2.1.1.(1)(b) reveals that the level of performance of the applicable Division B provisions, *acceptable solutions*, is the benchmark that an *alternative solution* must match. In other words, the Code Analysis must demonstrate that the *alternative solution* **performs as well as** the *acceptable solution*.

The determination of the level of performance of a <u>performance</u> <u>provision</u> of Division B is easier than that of a <u>prescriptive</u> <u>provision</u> of Division B.

LEVEL OF PERFORMANCE OF THE <u>PERFORMANCE</u> PROVISIONS OF DIVISION B

Determining the level of performance of a <u>performance provision</u> is usually straight forward since the level of performance is usually stated in the *acceptable solution* of Division B. For example, the level of performance of Div. B, Sentence 3.2.6.2.(2) is stated in the text of the Code:

"... a high building shall be designed so that contaminated air in all floor areas above the lowest exit storey will not contain more than 1% by volume of contaminated air for a period of 2 hours after the start of a fire ..."

The level of performance is that **contaminated air is limited to** 1% by volume for a period of 2 hours after the start of a fire. This can be verified by design calculations or a test.

Some <u>performance provisions</u> do not numerically quantify the level of performance. For example, Div. B, Sentence 3.2.5.7.(1) states:

"An adequate water supply for firefighting shall be provided for every building."

Step 7b
Confirm Level of
Performance of Applicable
Division B Provision(s)

Step 7b, Confirm Level of Performance of Applicable Division B Provisions (*Acceptable Solutions*)

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"An adequate water supply for firefighting shall be provided for every building."

When a Division B <u>performance provision</u> does not directly establish a level of performance, the level of performance required by the Code must be established and proven by the designer and confirmed by the person having jurisdiction. In the case of Sentence 3.2.5.7.(1), the person having jurisdiction could consult Appendix A, and with Officials from the Fire Department to accept or refuse the designer's determination of "adequate water supply".

In support of the *alternative solution*, the Code Analysis may reference good engineering practice appropriate in the circumstances and described in various handbooks, manuals, guidelines and codes.

LEVEL OF PERFORMANCE OF THE PRESCRIPTIVE PROVISIONS OF DIVISION B

Determination of the level of performance of <u>prescriptive</u> <u>provisions</u> can be a challenge since the technical requirements of Division B are often stated without an explanation of the intended level of performance.

For example, Clause 3.4.2.5.(1)(a) requires a maximum travel distance of 25 m to the nearest exit in a high hazard industrial occupancy. The level of performance of this <u>prescriptive provision</u> is not 25 m since this is just a measurement of length. We know that this requirement relates to the ability to evacuate safely. But the Code does not state "how well" the maximum travel distance of 25 m provides for a safe evacuation in an emergency.

TRANSCRIBING THE LEVEL OF PERFORMANCE OF PRESCRIPTIVE PROVISIONS IN WORDS AND NUMBERS

The level of performance of <u>prescriptive provisions</u> is likely to be best described in words. This is called the "qualitative value" of the level of performance of a <u>prescriptive provision</u>.

To substantiate a qualitative value of the level of performance of a <u>prescriptive provision</u> of the Code, the proponent may submit:

- · fire hazard analysis
- · evaluation of fire scenarios
- · engineering analysis
- · standards from other jurisdictions
- · performance in practice/installation
- good engineering practice
- statistics
- · past performance
- · documents used to support Code changes

It is sometimes possible to describe the level of performance of a <u>prescriptive requirement</u> using numbers. This is called the "quantitative value" of the level of performance of a <u>prescriptive provision</u>. If possible, always make a quantitative statement of the level of performance of the <u>prescriptive provision</u>.

To substantiate the quantitative value of the level of performance of a <u>prescriptive provision</u> of the Code, the designer may submit:

- · product or material test results
- · engineering analysis and mathematical modelling
- · computer modelling
- · documents used to support requests for Code changes
- · risk analysis

Starting on page 51 of this module, is a list of ten recognized tools that can be used to determine the level of performance of a <u>prescriptive</u> Code <u>requirement</u> and that of an <u>alternative</u> solution.

DETERMINING THE LEVEL OF PERFORMANCE OF THE PRESCRIPTIVE PROVISIONS OF DIVISION B

There are a few important things to remember when determining or assessing the level of performance of <u>prescriptive provisions</u>:

 Realize that the process is not "cut and dry" or "black and white". There may not be an easily defined level of performance for a particular <u>prescriptive provision</u>.

- The process requires "outside of the box" thinking.
- The experience and knowledge of the designer and that of the person having jurisdiction will be helpful but remember that consultation with others is sometimes necessary.
- Give careful consideration to the linked pairs of objectives and functional statements because they are your guide. Later, when intent statements are published, they may help to clarify the level of performance of prescriptive Code provisions.

SUGGESTED METHOD TO DETERMINE THE LEVEL OF PERFORMANCE OF PRESCRIPTIVE PROVISIONS

The Code does not contain a set or procedures for establishing or verifying the level of performance of prescriptive Code provisions. The following procedure is suggested and a principal authority may vary what follows. Let's consider the laundry drying equipment exhaust duct again. You will recall that Clause 6.2.3.8.(7)(a) requires every exhaust duct that is connected to laundry drying equipment be independent of other exhaust ducts.

You will also recall that a verification of Table 6 of Supplementary Standard SA-1 confirmed one linked pair of *objective* and *functional statement*. We then used [F81-OS1.1] to determine the "area of performance" of the *acceptable solution*. This is a crucial point of information since the "area of performance" is used to determine the level of performance of the <u>prescriptive provision</u>. The "area of performance" was stated as:

The alternative solution must minimize the risk of malfunction, interference, damage, tampering or misuse of the exhaust system for Safety — Fire Safety reasons so that a person in or adjacent to the building will not be exposed to an unacceptable risk of injury due to fire.

Now that the "area of performance" has been established, the level of performance of the <u>prescriptive provision</u> is arrived at by asking a number of generic questions:

 How does the <u>prescriptive provision</u> reduce the risk of undesirable consequences?

- Is there a provision, elsewhere in the Code, that allows an exception to this particular situation?
- Are there any factors that would affect the level of performance but are not regulated by this or other provisions of the Code?
- If any number of a measurement of quantity of a prescriptive Code provision were increased or decreased, what impact would that have and in what way?

This list is of questions is not exhaustive. Designers and persons having jurisdiction are encouraged to make a list of questions that could be used in the determination of the level of performance of applicable <u>prescriptive provisions</u>.

EXERCISE # 7 - STATING IN WORDS AND NUMBERS THE LEVEL OF PERFORMANCE OF THE PRESCRIPTIVE PROVISIONS OF DIVISION B

In the example of the laundry exhaust duct we can conclude that the Code reduces the risk of fire by requiring that laundry exhaust ducts be independent of other exhaust ducts so that flammable lint does not accumulate in other ducts.

1.	Consider the laundry drying equipment exhaust duct and state the quantitative value of the level of performance of Clause 6.2.3.8.(7)(a).
_	
_	
-	

DETERMINING THE LEVEL OF PERFORMANCE WHEN THERE IS MORE THAN ONE APPLICABLE DIVISION B PROVISION

In step 4b, a number of applicable Division B provisions (acceptable solutions) may have been identified. In such cases, the level of performance of all the applicable provisions should be considered as forming a whole rather than as individual requirements. For example, a proposed alternative solution involving exterior sheathing for a house might also be required to contribute to bracing of the exterior wall. In such cases, the applicable Division B provisions for exterior sheathing and bracing would be considered together to establish the level of performance of the wall as a system. An extreme example would be a proposed alternative solution to construct an entire house out of recycled materials that are not recognized by the Code. In such a case, there will be many provisions related to safety, health, fire protection and structural sufficiency of the building. This kind of complex proposed alternative solution would require an extensive Code Analysis and assessment so that all applicable Division B provisions have been considered.

WHEN DIVISION B CONTAINS SEVERAL POSSIBLE DESIGN OR COMPLIANCE OPTIONS

Some Division B Code provisions allow more than one design option for a building component that is addressed by a proposed alternative solution. Continuing with the example of proposed alternative roofing materials introduced at Step 4b, imagine that a plastic roof tile is proposed as an alternative roofing material for a house. Subsection 9.26.2. lists a number of different design options as acceptable solutions. Each roofing material has a different level of performance in terms of "how well" it acts. A cursory review of Section 9.26. In Table 9 of Supplementary Standard SA-1, reveals that a roofing system is to:

- support and withstand expected loads and forces,
- · limit or accommodate dimensional change,
- resist the ingress of precipitation, water or moisture from the exterior,
- · facilitate the dissipation of water from the building,

- limit moisture condensation, and
- resist deterioration resulting from expected service conditions for reasons of Health — Indoor Conditions and Safety — Structural Safety reasons.

The question is then: "Which roofing system would the proponent select to establish the level of performance of the applicable Division B provisions?" You will recall that the Code is a set of minimum provisions, so the question can be rephrased as: "Which design option from Section 9.26. of Division B has the "minimum" level of performance for comparison purposes?

The submitted documentation would likely compare the alternative roofing product to the most similar design option that is accepted in Division B of the Code. At the same time, the Code Analysis (documentation) must:

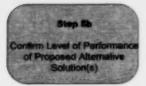
 consider the roof as a system and identify the level of performance expressed in general provisions for roofing systems,

and

 demonstrate to the person having jurisdiction that the alternative approach performs to the level expected of a roofing system.

A similar approach must be used when Division B of the Code provides several compliance option. You will recall that Sentence 3.3.1.7.(1), provides four different compliance option for the protection of floor areas with a barrier-free path of travel. The exception of Sentence 3.3.1.7.(2) could only be used for comparison purposes in the case of residential occupancy.

When the level of performance of the applicable Division B provisions (acceptable solutions) has been determined, in the case of the preparation of the Code Analysis and confirmed by the person having jurisdiction in the case of the assessment of the alternative solution, proceed to step 8b.



Step 8b, Confirm Level of Performance of the Proposed Alternative Solution

According to Div. C, Sentence 2.1.1.1.(1), it is the responsibility of the person proposing the use of an *alternative solution* to provide documentation that we call a Code Analysis. In turn, it is the responsibility of the person having jurisdiction to review the Code Analysis and decide if compliance with Div. A, Clause 1.2.1.1.(1)(b) has been achieved. The process is similar to a plans review against the requirements of Division B *acceptable solutions*.

RESOURCES TO ASSIST IN THE TECHNICAL EVALUATION OF A PROPOSED ALTERNATIVE SOLUTION

The evaluation of a proposed *alternative solution* may be complex. To prepare the Code Analysis or to assess the Code Analysis a number of tools are available to Building Code Act Practitioners.

Remember that if a proponent is not satisfied with the decision of the person having jurisdiction to refuse the *alternative solution* or to impose conditions of acceptance, the decision of the person having jurisdiction may be appealed to the Building Code Commission or the Ontario Superior Court of Justice under Sections 24 and 25 respectively of the *Building Code Act*.

EXERCISE #8 - TOOLS FOR THE DETERMINATION OF THE LEVEL OF PERFORMANCE

The determination of the level of performance of the proposed alternative solution is achieved by using the same tools that are used to determine the level of performance of acceptable solutions. Consult the ten recognized tools that can be used to determine the level of performance of a prescriptive Code requirement and that of an alternative solution and the facilitator will deal with your questions, comments and concerns during the class.



Step 8b

Confirm Level of Performance of Proposed Alternative Solution(s) **Step 8b**, Confirm Level of Performance of the Proposed Alternative Solution

According to Div. C, Sentence 2.1.1.1.(1), it is the responsibility of the person proposing the use of an *alternative solution* to provide documentation that we call a Code Analysis. In turn, it is the responsibility of the person having jurisdiction to review the Code Analysis and decide if compliance with Div. A, Clause 1.2.1.1.(1)(b) has been achieved. The process is similar to a plans review against the requirements of Division B *acceptable solutions*.

RESOURCES TO ASSIST IN THE TECHNICAL EVALUATION OF A PROPOSED ALTERNATIVE SOLUTION

The evaluation of a proposed *alternative solution* may be complex. To prepare the Code Analysis or to assess the Code Analysis a number of tools are available to Building Code Act Practitioners.

Remember that if a proponent is not satisfied with the decision of the person having jurisdiction to refuse the *alternative solution* or to impose conditions of acceptance, the decision of the person having jurisdiction may be appealed to the Building Code Commission or the Ontario Superior Court of Justice under Sections 24 and 25 respectively of the *Building Code Act*.

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STOP

	TOOL	ELEMENTS TO CHECK	
1		 ✓ Test is done by an accredited agency ✓ Test is specific to proposed product/material ✓ Variations between the test and intended application ✓ Assumptions 	Padis
2	Evaluation of Scenarios (hazard analysis)	 ✓ Scenarios are realistic ✓ All suitable scenarios are considered ✓ Credible worst case scenario is considered ✓ (Fire) Assumptions related to Fire Department response time, occupant characteristics, fuel load, building characteristics are valid ✓ (Envelope) Assumptions related to temperature, humidity and exposure are valid ✓ All variables are considered 	Pri the car Car pri will po

ADVANTAGES	DISADVANTAGES		
ss or fail is easy to tinguish	May be difficult to confirm that test is equivalent to a test recognized in the Code Careful assessment is required to determine if conditions associated with the test are applicable to the proposed use of the product/material Can be expensive depending on type of test		
ovides the basis for a brough, logical assessment of a possible fire scenarios and a help focus the analysis on give a reasonable ediction of performance are actual tests are not assible ually cost effective	Scenario analysis is qualitative and is dependent on the base assumptions Risk that a possible scenario will be overlooked Third-party or peer review may be necessary		

	TOOL	ELEMENTS TO CHECK	
3	Engineering Analysis and Mathematical Modelling Structural calculations Egress analysis Environmental analysis for building envelope Radiation exposure calculations for limiting distance Design fire analysis	Input data Loads for structural assessment Building characteristics Coccupancy characteristics Design fire data Design Methodology Factors of Safety Qualifications of proponent	Constant of the constant of th
4	C o m p u t e r Modelling	Theoretical basis for model Applicability to the proposal Input data Output data Qualifications of proponent	C. pe
5	Previous Approvals by Other Persons Having Jurisdiction	Similarity of product/material/ design/system Conditions and limitations Codes and standards that form basis of approval (including foreign ones)	Si pr U:

ADVANTAGES	DISADVANTAGES		
in give a realistic prediction of rformance where actual tests e not possible ensitivity analysis can help of nfirm conclusions dustry validated methods ailable ay be less costly than imputer modelling or full-scale sts	Requires knowledgeable person to assess suitability, input data and analyse results May be costly May require analysis by a third-party or peer review		
an give a realistic prediction of erformance where actual tests e not possible dustry validated models are ailable	Requires knowledgeable person to assess suitability, input data and analyse results Programming methodology is inherent to program and not usually available for scrutiny May be costly May require analysis by a third-party or peer review		
milar proposal has been eviously analysed sually inexpensive	Similar proposal may have been evaluated to different criteria Qualifications of original applicant and reviewer may not be readily available		

	TOOL	ELEMENTS TO CHECK	ADVANTAGES	DISADVANTAGES
6	Manufacturer's Information	 Publishing date Jurisdictions for which the information was written Date of tests (has product changed since then?) 	Information may be specific to the product	Information may not relate to the areas of performance to be evaluated Information may have a marketing focus Information may not be technically accurate
7	Published Standards Not Referenced in the Code	 Application and scope of standard Date of publication Intent of standard Applicability to proposed alternative solution 	Standard recognized in other jurisdictions	 May be based on different performance levels than Division B of 2006 Code May be based on different areas of performance
8	Research Papers	Assumptions and limitations of research Qualifications of author(s)	 May be the only technical information available for innovative technologies 	Peer review of conclusions may be necessary
9	Risk Analysis	Assumptions and limitations of analysis Basis for input data	Can give a reasonable prediction of risk if accurate data is available	Input data may be difficult to verify
10	Performance Assessment Methods Peer review Delphi Method* Panel of experts	Qualifications of persons involved Methodology of assessment	 May be the only option available where technical information is not available or testing is not possible May be most suitable for large, complex alternative solutions 	May be costly and may require extended time period for consensus to be reached

^{*} The Delphi Method is a coordinated review of a complex issue by a number of experts in the field.

WHAT IS ACCEPTABLE PROOF TO CONFIRM THE LEVEL OF PERFORMANCE OF THE ALTERNATIVE SOLUTION?

The Code Analysis of a proposed *alternative solution* can range from the simple to the complex. Judgment will be required to determine if the person having jurisdiction has received enough supporting documentation.

The documentation must demonstrate that the level of performance of the *alternative solution* is sufficient against that of the applicable "areas of performance" established by the linked pairs of *objectives* and *functional statements* attributed to the applicable Div. B provisions (*acceptable solutions*).

Facilitator - Self-Study
Participant Note The proof
must be based on past
performance. Tests
described in Article
2.1.1.2., or other
evaluation.
| Div. C. Clause

2.1.1.1.(1)(h)]

Ultimately, the decision on the acceptability of the proof will be the responsibility of the person having jurisdiction.

If the proof is acceptable, and the level of performance of the proposed *alternative solution* is determined to be satisfactory, proceed to Step 9b.

If the proof is determined to be unacceptable, or if the proof is not sufficient to confirm that the level of performance of the *alternative* solution performs at least as well as the *acceptable* solution in the "areas of performance", the applicant must redo Step 8b or return to Step 1. When the proponent fails to satisfy the person having jurisdiction, proceed to the Final Step.

Continuing with the example of the laundry exhaust duct the Code Analysis claims that the *alternative solution* will provide zero build up of lint in other exhaust ducts.

Step 9b Compare Levels of Performance Step 9b, Compare Levels of Performance

The next step is to compare the level of performance of the Division B provision (acceptable solution) with that of the alternative solution.

If Steps 7b and 8b were comprehensively done, this Step should be straightforward.

WHAT IS ACCEPTABLE PROOF TO CONFIRM THE LEVEL OF PERFORMANCE OF THE ALTERNATIVE SOLUTION?

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The documentation must demonstrate that the level of performance of the *alternative solution* is sufficient against that of the applicable "areas of performance" established by the linked pairs of *objectives* and *functional statements* attributed to the applicable Div. B provisions (*acceptable solutions*).

Facilitator - Self-Study / Participant Note: The proof must be based on past performance, tests described in Article 2.1.1.2., or other evaluation.

fDiv. C. Clause

2.1.1.1.(1)(b)]

Ultimately, the decision on the acceptability of the proof will be the responsibility of the person having jurisdiction.

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Continuing with the example of the laundry exhaust duct the Code Analysis claims that the *alternative solution* will provide zero build up of lint in other exhaust ducts.

Step 9b Compare Levels of Performance

Step 9b, Compare Levels of Performance

The next step is to compare the level of performance of the Division B provision (acceptable solution) with that of the alternative solution.

If Steps 7b and 8b were comprehensively done, this Step should be straightforward.

You will recall that the proposed alternative solution involves a laundry drying equipment exhaust duct to be connected to a bathroom exhaust duct before discharging to the outdoors. The level of performance of Clause 6.2.3.8.(7)(a), the acceptable solution, is zero entry of lint in other exhaust ducts. If you connect a laundry equipment exhaust duct to a bathroom exhaust duct, without safeguards, there is a possibility that lint will enter the bathroom exhaust duct.

The Code Analysis claims that the design of the *alternative* solution is such that the bathroom exhaust fan will always be operating when the laundry drying equipment is in use. The positive pressure in the bathroom exhaust duct will prevent lint from entering that duct. The design of the *alternative* solution also incorporates a back pressure device that will prevent bathroom exhaust air from entering the laundry exhaust duct when the laundry drying equipment is not in use. The Code Analysis concludes that the level of performance of the proposed *alternative* solution is zero entry of lint in other exhaust ducts.

If the level of performance of the proposed alternative solution meets or exceeds the level of performance of the applicable Division B provision (acceptable solution), proceed to Step 10b.

If the level of performance of the proposed *alternative solution* is less than the level of performance of the applicable Division B provision (*acceptable solution*), the person having jurisdiction must inform the applicant. The applicant may have to return to Steps 7b, 8b, or to Step 1. Alternatively, the decision may be appealed to the Building Code Commission or the Ontario Superior Court of Justice under Sections 24 or 25 of the *Building Code Act*, as the case may be.

GUIDED EXERCISE # 9 - STEP 9b COMPARE LEVELS OF PERFORMANCE

This is a guided exercise, you will recall from the introduction to Module 12 that we informed you that the sample process for the assessment of *alternative solutions* will not conclude whether the proposed *alternative solution* complies with Division B, under the provisions of Division A, Clause 1.2.1.1.(1)(b).

The course material will remain neutral in the conclusion whether to accept or refuse the proposed *alternative solution* because the authority to do so lies with the person having jurisdiction. Consequently, exercise # 9 is guided.

The task is to compare the level of performance of Div. B, Clause 6.2.3.8.(7)(a) with that of the proposed *alternative solution* for the laundry exhaust duct.

In Step 7b, you determined that the level of performance of Clause 6.2.3.8.(7)(a) was zero entry of lint into other exhaust ducts.

In Step 8b, the Code Analysis claimed that the level of performance of the proposed alternative solution was zero entry of lint into other exhaust ducts.

NOTA BENE:

The level of performance of the alternative solution must be established on the basis of past performance, tests described in Article 2.1.1.2. of Division C or other evaluation that the proposed alternative solution will achieve the level of performance of the applicable acceptable solution.

[Div. C, Sentence 2.1.1.1.(1)]

It is up to the person having jurisdiction to determine if the level of performance of the Division B provision (acceptable solution) will be satisfied by that of the alternative solution.

If the person having jurisdiction decides that the proposed alternative solution complies with Div. A, Clause 1.2.1.1.(1)(b), you may proceed to Step 10b and consider establishing conditions of acceptance.

e provided, not eed to have ac he course.		

STOP

Step 10b
Establish Conditions
of Acceptance, if any

Step 10b, Establish Conditions of Acceptance, if any

Designs that comply with the *acceptable solutions* of Division B do not have conditions imposed on their use. However, since *alternative solutions* may be based on characteristics related to the specific building or a characteristic of its use, occupancy, operations or maintenance, the acceptance of *alternative solutions* may be dependent on certain conditions.

Conditions of acceptance should address the **integrity** (effectiveness) of the *alternative* solution so that future modifications do not inadvertently compromise the *alternative* solution, in whole or in part.

In other words, future changes to the building must take into account the specific circumstances (conditions) under which the alternative solution was accepted. Otherwise, the alternative solution may not perform as intended.

Conditions will often become apparent during the assessment of the Code Analysis of a proposed *alternative solution*. Certain conditions may be established based on information provided by the proponent in the Code Analysis under the requirements of Clause 2.1.1.1.(1)(b) and Sentence 2.1.1.1.(2) of Division C.

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STOP

Step 10b Establish Conditions of Acceptance, if any Step 10b. Establish Conditions of Acceptance, if any

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In other words, future changes to the building must take into account the specific circumstances (conditions) under which the alternative solution was accepted. Otherwise, the alternative solution may not perform as intended.

Conditions will often become apparent during the assessment of the Code Analysis of a proposed *alternative solution*. Certain conditions may be established based on information provided by the proponent in the Code Analysis under the requirements of Clause 2.1.1.1.(1)(b) and Sentence 2.1.1.1.(2) of Division C. In the case of Clause 2.1.1.1.(1)(b), the Code Analysis must establish the level of performance of the *alternative solution* on the basis of:

- · past performance,
- · tests described in Article 2.1.1.2. of Division C, or
- · other evaluation.

Similarly, in the case of Sentence 2.1.1.1.(2), the Code Analysis must include information about:

- · assumptions, and
- limiting or restricting factors on the use of the alternative solution.

Once the Code Analysis is verified and accepted, these assumptions, limiting and restricting factors may be included as conditions for the acceptance of the *alternative solution*.

The Code Analysis (documentation) must also identify:

- · testing procedures,
- · studies.
- building performance parameters
- · commissioning requirements,
- · operational requirements and
- · maintenance requirements.

Again, these may be included as conditions for the acceptance of the *alternative solution*, as well as conditions that were identified in previously accepted *alternative solutions*.

EXAMPLES OF CONDITIONS FOR THE ACCEPTANCE OF ALTERNATIVE SOLUTIONS

Conditions of acceptance could include, but are not limited to the following examples:

- · limitation on occupant load,
- · restriction on occupancy classification,
- maximum combustible content,
- maximum live loads due to use and occupancy,
- · restriction on hours of operation or supervision,
- specific operating conditions for building systems,
- environmental factors (indoor conditions),
- specific maintenance for certain building features,
- specific maintenance for equipment that is relied on for the alternative solution.
- reference to specific maintenance and testing requirements addressed by another Code (e.g. Fire Code),
- · documentation or amendments to the Fire Safety Plan,

NOTA BENE:

Not all buildings require a fire safety plan. Buildings that require a fire safety plan are identified in Section 2.8. of the Fire Code, a regulation under the *Fire Protection and Prevention Act*, 1997, 1997, S.O. 1997, c.4.

- minimum special training requirements for supervisory or maintenance staff,
- · advisory notices to tenants and occupants, and
- special signs

Before a building system is put into regular use, it may be commissioned by running tests to verify that the system will operate properly. Additional commissioning may be required for building systems that contribute to the integrity, effectiveness, and soundness of an *alternative solution* and may involve:

- fire protection systems including:
 - o fire alarm and detection systems
 - automatic sprinkler
 - standpipe
 - special suppression

- mechanical systems for:
 - smoke management
 - ventilation
 - pressurization
- · electrical systems including:
 - emergency power
 - security
 - lighting
- · egress and exiting paths, and
- supervisory staff protocols

AUTHORITY TO ATTACH CONDITIONS OF ACCEPTANCE TO PROPOSED ALTERNATIVE SOLUTIONS

The Code limits the criteria to be considered in the evaluation of an *alternative solution*:

Div. A, Clause 1.2.1.1.(1)(b): "...in respect of the *objectives* and *functional statements* attributed ..."

Only the "areas of performance" that are specified by the linked pairs of objectives and functional statements of the applicable Division B provision (acceptable solution) are permitted to be evaluated. A personal expectation of required "areas of performance" or level of performance is not permitted.

Judgment is required in considering the conditions for accepting an *alternative solution* with respect to its integrity (effectiveness). For example, a proposed *alternative solution* dealing with the exit capacity from a floor area may rely on a certain limited occupant load of the floor area. However, the person having jurisdiction evaluating the *alternative solution* may have reason to believe that the floor area will not be supervised and that the limited occupant load could be exceeded during normal use.

In this case, the proposed *alternative solution* would meet the requirements of Div. A, Clause 1.2.1.1.(1)(b), but only with a limitation on occupant load that can only be controlled by supervisory staff. The person having jurisdiction would be justified in refusing such a proposed *alternative solution* if the applicant cannot provide sufficient evidence that appropriate supervision will be provided.

SERVICE LIFE OF AN ALTERNATIVE SOLUTIONS

The Code does not state a minimum service life for designs that comply with Division B, nor does it state a minimum service life for proposed *alternative solutions*. Service life should not be confused with the need for maintenance and keeping a building in good repair.

However, it is clear that the Code intends that any Code-compliant design—using acceptable solutions or alternative solutions—needs to perform as intended when the building is in use. Div. A, Sentence 1.2.2.1.(1) states that:

"All materials, appliances, systems and equipment installed to meet the requirements of this Code shall possess the necessary characteristics to perform their intended functions when installed in a building."

GUIDED EXERCISE # 10 - STEP 10 b ESTABLISH C O N D I T I O N S O F ACCEPTANCE, IF ANY

This a guided exercise considering the laundry drying equipment exhaust duct. When the person having jurisdiction concludes that the level of performance of the proposed *alternative solution* is in compliance with Div. A, Clause 1.2.1.1.(1)(b), it is time to consider conditions of acceptance.

The Code Analysis claimed that the positive pressure in the bathroom exhaust duct will prevent lint from entering that duct and a back-pressure device will prevent washroom exhaust air from entering the laundry drying equipment exhaust duct. Are there any conditions that the person having jurisdiction should establish as part of the acceptance of the proposed *alternative solution?*

A condition could be established that the back-pressure device be inspected once every 6 months, and that the results of the inspection be documented in a maintenance log book.

- Another condition could be to maintain the integrity of the fire separation if the back-pressure device was located in a fire-rated assembly; such as being accessible from a rated access hatch.
- Another condition could be that an interlock mechanism be provided to ensure that the laundry drying equipment cannot run if the bathroom exhaust fan is not operating.
- Another condition could be that the dryer be electric only and not gas or propane powered because the issue of venting products of combustion was not addressed by the Code Analysis.

These conditions limit the probability that the integrity or reliability of the *alternative solution* will be compromised. In other words, the conditions ensure that the *alternative solution* will perform as proposed and accepted.

in the space provided, note any co- you may need to have addressed delivery of the course.	

STOP

Final Step
Acceptance or Refusal and Document
Retention

End of Day 4

Final Step - Acceptance or Refusal and Document Retention

Part of the process of accepting or refusing an alternative solution should involve the record of the decision.

A principal authority, in the interest of risk management, may have policies:

- prescribing the process for the assessment of an alternative solution.
- specifying the record to support the decision to accept or refuse the alternative solution

NOTA BENE:

While there is no legislative requirement under either the *Building Code Act* or the Building Code, to document decisions and retain records, from a risk management point of view it is highly advisable to do so. Consult the records retention by-law of the principal authority for the retention period of records. In case of a dispute, the person having jurisdiction should have a record of the decision to accept or refuse the use of an *alternative solution* along with the documentation in support of the request.

Document Retention in the case of *alternative solutions* is very important because the basis to determine the level of performance is stated in the Code Analysis and not the text of the building code that was in effect at the time the *alternative solution* was accepted.

In the space provided note any comment question or concern

you may no delivery of t	eed to have a he course.	addressed b	y the faci	litator durin	g the
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MODULE THIRTEEN -A- POWERS AND DUTIES OF THE CBO

Facilitator / Self-Study / Participant Note: Module 13 - A- is for those Building Code Act Practitioners that intend to challenge the Legal/Process examination for a Chief Building Official or a Registered Code Agent.

INTRODUCTION

In Module Three, you were introduced to Subsections 1.1-(5) and (6), of the BCA, which define what the RCA and CBO must do to fulfill their respective role under the BCA and the OBC. In the next three Modules, we will look at the powers and duties of the CBO, those of the RCA along with those powers and duties of a CBO that are to be exercised by the RCA having jurisdiction. You will recall that the enforcement of the BCA and the provisions of the OBC is triggered by one of the following five activities:

- 1. construction of a building or part thereof,
- 2. demolition of a building or part thereof,
- 3. change of use of a building or part thereof,
- 4. remedy of an unsafe building, and
- administration of standards for the maintenance and occupancy of property.

In this course, we do not deal with the administration of standards for the maintenance and occupancy of property.

Module Thirteen is in three parts.

Module Thirteen -A- will deal with the powers and duties of the Chief Building Official.

Module Thirteen -B- will deal with the powers and duties that can be exercised by the CBO or the RCA having jurisdiction.

Module Thirteen -C- will deal with the powers and duties of the RCA and the transfer of information from the RCA to the CBO or the Director of the Building and Development Branch.

NOTA BENE:

As evidenced by Subsection 1.-(1.3) of the *Building Code Act*, a reference to the CBO includes an Inspector who has the same powers and duties as the CBO in relation to sewage systems by virtue of Subsection 3.1-(3) or 6.2-(4) and plumbing by virtue of Subsection 6.1-(5).

OBJECTIVES of Module Thirteen -A-

In this Module, you will:

- * overview the role of the CBO,
- * review the powers and duties of the CBO,
- study the extent to which the Inspectors can exercise the powers and duties that have been assigned to the CBO by the BCA.
- identify the BCA authority of Council that can be delegated to a CBO, and
- verview the requirements of the BCA and the OBC for fees to be paid for permits.

THE ROLE OF THE CHIEF BUILDING OFFICIAL

Within the applicable jurisdiction, it is the role of the CBO, to:

- ✓ establish operational policies for the enforcement of the BCA and the OBC.
- co-ordinate and oversee the enforcement of the BCA and the OBC,
- ✓ exercise powers and perform other duties assigned to him/her under the BCA and the OBC, and
- exercise powers and perform duties in accordance with the applicable Code of Conduct within his/her area of jurisdiction.
 [BCA Clauses 1.1-(6)(a) to (d)]

Operational policies under Clause 1.1-(6)(a) of the BCA fall within the realm of day-to-day activities in managing the risk of liability which arise from exercising powers and performing duties under the BCA and the OBC. A complete analysis of the potential liability to the municipality or the RCA, associated with the enforcement of the BCA and the OBC, is beyond the scope of this course.

The material of this course is intended to assist the CBO and RCA in adopting and following procedures which will provide a level of service that will provide safety for the occupants of buildings and protection from the risks of liability.

You will recall from Mr. Levitt's article <u>BCA Liability "Wrong but not Careless"</u> [Module Ten] that in order to succeed in the causes of action of negligence or of negligent misrepresentation, a plaintiff must do more than establish negligence.

EXERCISE #1 - ESTABLISHING OPERATIONAL POLICIES

As evidenced by Clauses 1.1-(6)(a) and (b) of the BCA, it is the role of the of the CBO to establish operational policies for the enforcement of the BCA and the OBC and to co-ordinate and oversee the enforcement of the BCA and the OBC within the applicable jurisdiction. In the space provided, summarize your operational policy for dealing with the identified situations under the BCA.

In class, you will be asked to compare your policy with that of the members of your table-group. As a result of your discussions, can your operational policy be improved? If you do not have an operational policy to deal with the situation, should you have one? In the space provided you are asked to identify other operational policies that you have adopted to deal with predictable situations. During class discussions, the facilitator will give you time to explain why the operational policy was developed and how it benefited the enforcement of the BCA and the OBC in your municipality.

1.	Our operational policy for dealing with persons who construct, demolish or change the use of a building without a permit being issued by the CBO is:
_	

5.	Identify an operational policy, of your municipality, for dealing with a situation that has not been dealt with in questions 1 to 4.
	Our operational policy for deciding to commence a proceeding under the <i>Provincial Offences Act</i> is:
	Our operational policy for deciding to make an Order to Comply is:
	Changed without a permit being issued by the CBO is:

6.	On my return to the office, I will need to develop operational policies to deal with:
_	
_	
_	



POWERS AND DUTIES OF THE CBO UNDER THE BCA

Take note that the authority to allow the use of an alternative solution, to make an Order to Uncover and a Stop Work Order could also be had by a Registered Code Agency and will be discussed later in Module Thirteen -B-. We will now look at the powers and duties of a CBO under the BCA.

* authority of CBO to issue permits

The CBO has the authority to issue a:

- ✓ permit to construct or demolish a building or part thereof. [BCA Subsection 8.-(2)]
- ✓ conditional permit for any stage of construction.
 [BCA Subsection 8.-(3)]
- ✓ permit to change the use of a building or part of a building if the change would result in an increase in hazard. [BCA Subsection 10.-(2)]

* duty of CBO to decide on permit application

In the case of a permit to construct or demolish or a conditional permit under Section 8 of the BCA, the CBO has the duty to:

- ✓ determine if the application contains the prescribed information to start the period within which he/she must decide to issue or refuse the permit. [BCA Subsection 8.-(1.1) and Div. C, Sentence 1.3.1.3.(5)]
- ✓ review the application in accordance with the requirements
 of Clauses 8.-(2)(a) to (f) of the BCA,
- decide within the prescribed period, whether to issue or refuse the permit. [BCA Subsection 8.-(2.2) and Div. C, Sentences 1.3.1.3.(1) to (4) and (6) to (9)]

In the case of a Change-of-Use Permit under Section 10 of the BCA, the CBO has a duty to:

✓ review the application and determine if it is sufficient to warrant the issuance of the Change-of-Use Permit. [BCA Clauses 10.-(2)(a), (b) and (c)]

* duty of CBO to provide reasons for refusing permit

In the case where an application for a permit to construct or demolish under Section 8 of the BCA is refused, the CBO has the duty:

✓ to inform the applicant in writing of all of the reasons for the refusal of the permit. [BCA Subsection 8.-(2.3) and Div. C, Clause 1.3.1.3.(1)(b)]

and the CBO must do so,

✓ within the period prescribed in the Code, [BCA Subsection 8.-(2.2) and Div. C, Sentences 1.3.1.3.(1) to (4) and (6) to (9)]

NOTA BENE: There are no such requirements for a:

Conditional Permit under Subsection 8.-(3) of the BCA.

and

Change-of-Use Permit under Section 10 of the BCA.

* duty of CBO to forward plans to PEO and OAA

The CBO has the duty to forward drawings, plans or specifications accompanying applications for permits or the reports arising out of the general review of the construction of a building to PEO or OAA to determine if the *Professional Engineers Act* of the *Architects Act*, is being contravened when requested to do so by the respective association.

[BCA Subsection 8.-(9.1)]

* authority of CBO to revoke permits

Subject to an appeal to the Ontario Superior Court of Justice under Section 25 of the BCA, the CBO has the authority to revoke a permit* issued under the BCA if:

- ✓ the permit was issued on mistaken, false or incorrect information.
- or

* Facilitator / Self-Study

Participant Note: A permit

issued under the BCA

includes a permit to construct or demolish

under Subsection 8.-(1), a

conditional permit under

Subsection 8.-(3) and a

change-of-use permit under Subsection 10.-(2) of the

BCA.

- ✓ after six months after the permit is issued, the construction or demolition in respect of which it was issued has not, in the opinion of the CBO, been seriously commenced,
- or
- ✓ the construction or demolition of the building is, in the opinion of the CBO, substantially suspended or discontinued for a period of more than one year,
- or
- ✓ the permit was issued in error,
- or
- ✓ the permit holder requests in writing that it be revoked,
- or
- ✓ a term of a Conditional Permit Agreement, under Clause 8.-(3)(c), has not been complied with. [BCA Clauses 8.-(10)(a) to (f)]

* authority of CBO to authorize a material change to permit information

The CBO has the authority to:

 authorize a material change to a plan, specification, document or other information on the basis of which a permit was issued.
 [BCA Subsection 8.-(12), (13) and (14)] duty of CBO to enforce the SWO and any order in respect of the matter when SWO made by the RCA

The CBO has a duty to enforce a SWO made by a RCA along with any other order made by the RCA in respect of the matter, after the RCA has referred the matter to the CBO in accordance with Div. C, Subsection 3.7.7.

[BCA Subsection 14.-(7)]

* authority of CBO to review, amend or rescind orders

The CBO has the authority to:

- ✓ review and amend or rescind an order made by an Inspector. An Inspector having jurisdiction may make an:
 - · Order to Comply under Subsection 12.-(2),
 - Order Not to Cover under Subsection 13.-(1), and
 - Order Requiring Tests and Samples under Clause 18.-(1)(f)]

[BCA Subsection 22.-(1)]

- ✓ review and amend or rescind a Stop Work Order made by a RCA <u>and any order in respect of the matter</u>. By way of Subsection 15.17-(3) of the BCA, a person authorized by a RCA is empowered to make an:
 - · Order to Comply under Subsection 12.-(2),
 - · Order Not to Cover under Subsection 13.-(1), and
 - Order Requiring Tests and Samples under Clause 18.-(1)(f); and

the RCA having jurisdiction or a person described in Clause 3.4.3.2.(1)(a) of Division C is also empowered to make an Order to Uncover under the authority of Subsection 13.-(6) of the BCA.

[BCA Subsection 14.-(8)]

authority of CBO to decide on "other recipients" of orders

The CBO has the authority to determine "<u>such other persons</u> <u>affected thereby</u>" who may be served with an:

- ✓ Order to Remedy an Unsafe Building. [BCA Subsection 15.9-(5)]
- ✓ Order to Prohibit the Use or Occupancy of an Unsafe Building which is not in compliance with an Order to Remedy an Unsafe Building. [BCA Subsection 15.9-(8)]
- ✓ Emergency Order and the statement of the measures taken to terminate the immediate danger and the statement of the costs of those measures. [BCA Subsections 15.10-(2) and (5) or (6)]
- ✓ Order to Suspend Construction. [BCA Subsection 15.21-(5) = 14.-(2)]
- authority of CBO to prohibit the use or occupancy of an unsafe building that is not in compliance with an Order to Remedy Unsafe Building

Under the BCA, the CBO has the authority to:

-make an Order to Prohibit the Use or Occupancy of an Unsafe Building when the Order to Remedy an Unsafe Building has not been complied with. [BCA Clause 15.9-(6)(a)]

authority of CBO to remove the unsafe condition and protect the public when a building is not in compliance with an Order to Remedy Unsafe Building

Under the BCA, the CBO has the authority to:

-cause an unsafe building to be renovated, repaired or demolished to remove the unsafe condition or take such other action as the CBO considers necessary for the protection of the public when an Order to Remedy an Unsafe Building has not been complied with.

[BCA Clause 15.9-(6)(b)]

* authority of CBO to make an Emergency Order

Under the BCA, the CBO has the authority to:

-make an Emergency Order containing particulars of the dangerous condition and requiring remedial repairs or other work to be carried out to terminate the immediate danger. [BCA Subsection 15.10-(1)]

* duty of CBO to post Emergency Order

Under the BCA, the CBO has the duty to:

-post the Emergency Order on the site of the building that poses an immediate danger. [BCA Subsection 15.10-(2)]

* emergency powers of CBO after the Emergency Order is made and posted

Under the BCA, after the Emergency Order is made and posted and either before or after it is served; the CBO has the authority to:

-take any measures necessary to terminate the immediate danger. In doing so, the CBO may be assisted by Inspectors and agents (contractors).

[BCA Subsection 15.10-(3)]

duty of CBO to post and serve the Statement of the Measures Taken to Terminate the Immediate Danger and the Statement of the Costs of the Measures Taken to Terminate the Immediate Danger under an Emergency Order

Under the BCA, the CBO has the duty to:

-post and serve the statement of the measures taken to terminate the immediate danger and the statement of the costs of those measures.

[BCA Subsections 15.10-(2) and (5) or (6)]

duty of CBO to apply to Superior Court of Justice for an order confirming the Emergency Order

It is the duty of the CBO, as soon as practicable after the statement describing the work done to terminate the immediate danger and the statement of the amount spent in doing so have been posted and served,

-to apply to the Ontario Superior Court of Justice for an order confirming the Emergency Order.

[BCA Subsection 15.10-(7)]

* authority of CBO to make an Order To Suspend Construction (OTSC)

Under the BCA, the CBO has the authority to make an Order to Suspend all or part of the Construction of the building to which the appointment of the RCA relates **if**:

 the CBO has reason to believe that the RCA has ceased to perform the functions specified in the appointment;

when

(b) the appointment of the RCA has not expired or been terminated.

[BCA Subsection 15.21-(1)]

* effect of Order To Suspend Construction

When the CBO makes and serves an OTSC, no person shall perform any act in the construction of the building other than work necessary to secure the safety and security of the building and the construction site.

[BCA Subsection 15.21-(4)]

★ duty of CBO to forward information to the Director of the Building and Development Branch

Under Subsection 4.1-(8) of the BCA, a Principal Authority that appoints a RCA is required to give to the Director of the Building and Development Branch of the Ministry of Municipal Affairs and Housing such information as may be prescribed in the building code.

It is the duty of the CBO to forward to the Director:

notice of the termination of the RCA and such other information as may be required by the Director when the CBO has refused to issue a permit for the specified building or has revoked the permit.

[Div. C, Sentence 3.7.6.1.(1)]

a copy of the OTSC along with such other information concerning the circumstances of the OTSC and as may be required by the Director.

[Div. C, Sentence 3.7.6.1.(2)]

NOTA BENE: T

There are no provision requiring the CBO to inform the Director that an RCA has been appointed.

* authority of CBO to apply for a Restraining Order

Under the BCA, where it appears to the CBO that a person does not comply with the BCA, the OBC or an order made under the BCA, despite the imposition of a penalty in respect of the noncompliance and in addition to any other rights, the CBO:

-may apply to the Superior Court of Justice for a Restraining Order directing that person to comply with the provision.

[BCA Subsection 38.-(1)]

DISCRETIONARY AND NON-DISCRETIONARY POWERS AND DUTIES OF THE CBO

As you can see, the CBO has specific powers and duties which are identified as his'/her's alone. Where there are a number of Building Department Staff, it is not possible for the CBO to undertake all reviews, investigations, analyses, etc... prior to issuing or revoking a permit or serving an Emergency Order, Order to Uncover, Stop Work Order, Order to Prohibit the Use or Occupancy of an Unsafe Building or an Order to Suspend Construction. To what extent can the CBO rely on Building Department Staff to perform his/her powers and duties?

A CBO has powers and duties that are discretionary, and which cannot be delegated to staff and non-discretionary which may be delegated to staff.

According to the Carswell Dictionary of Canadian Law, discretionary means:

At the discretion of someone; not available as of right.

For instance, a review of Subsection 14.-(1) reveals that the CBO has a discretionary power to make a Stop Work Order. It says in part "...the chief building official ... may order that all or any part of the construction or demolition cease." The decision to make a Stop Work Order is discretionary and can only be made by the Chief Building Official and cannot be delegated to an Inspector or a Manager or Supervisor of Inspectors.

On the other hand, the authority to issue a permit is non-discretionary and may be delegated to staff. Subsections 8.-(2) and 10.-(2) inform us in part "The chief building official shall issue a permit under Subsection (1), unless, ..." When the applicant has satisfied the requirements of Clauses 8.-(2)(a) to (f) or 10.-(2)(a) to (c) of the *Building Code Act*, the said applicant is entitled to a permit.

The CBO is therefore responsible to have a system in place to ensure that permits are issued in accordance with the requirements of the BCA by the Building Department Staff.

Exercise # 2 - EXERCISING THE POWERS AND DUTIES OF THE CBO

To prepare yourself, start by reading the Articles, entitled "Decisions of a Chief Building Official" written by Jeffrey Levitt, Senior Counsel, Legal Services Branch, Ministry of Municipal Affairs and Housing, as they appeared in the February and April 1998 issues of the <u>Journal</u>, published by the Ontario Building Officials Association.

Follow the established procedure and when prompted, support your answer with appropriate references.

Building Code Act 1002



Jeff Levitt

Legal Services Branch

DECISIONS OF A CHIEF BUILDING OFFICIAL¹

Section 8(2)(a) of the Building Code Act. 1992 ("BCA") requires the Chief Building Official ("CBO") to issue a permit unless, among other things, the "proposed building ... will contravene ... any other applicable law".

A CBO must, accordingly, make a determination about the compliance of a proposed building with "other applicable law" in order to make a decision about whether to issue a building permit. The interpretation of "applicable laws" (for example, zoning by-laws²) can be complex. To what extent is the CBO entitled to enlist the assistance of experts in determining compliance with applicable law?

The recent case of Albert Bloom Ltd. v. Bentinck (Township)³ indicates that it is proper for a CBO to seek advice about compliance with an applicable law and to take that advice into account when making a decision about the issuance of a permit. A CBO must not, however, simply ratify a decision that was made by someone else or take extraneous considerations into account when making the decision.

BACKGROUND

In the Albert Bloom case, an appeal against the issuance of a building permit for the construction of a commercial store was made by some landowners in the vicinity of the proposed store. The appellants argued, among other things, that the proposed commercial use of the building would not comply with the applicable zoning bylaw and, as the proposed building would not comply with "applicable law", the permit should not have been issued. The Judge ultimately determined that the proposed commercial use was, in fact, permitted under the applicable zoning by-law.

DECISION OF THE CBO

The appellants in the Albert Bloom case argued that the decision of the CBO should in any event be set aside because the CBO had "improperly delegated his authority" to the County planner. The appellants based this submission on the CBO's testimony that he had relied on the planner's advice that the use of the proposed building would comply with the applicable zoning bylaw.

The Judge held that the short answer to this submission was that it no longer matters what information the CBO had before him or on

whom he relied; the appeal is from the CBO's decision, not from the reasons for it ... ". As noted above, the Judge considered that the proposed building would comply with the applicable zoning by-law.

The Judge went on, however, to consider the extent to which a CBO may seek advice about compliance with an applicable law:

A somewhat longer answer to the point is that, taking the whole of the evidence of the ... CBO into account, he made the actual decision to issue the permit himself but he relied on input from [the County planner] as to compliance with the zoning by-law in so doing. Counsel for the applicants went so far as to submit that unless the CBO made an independent study of the proposed use and reached an independent conclusion that it was permitted, he was unlawfully delegating his authority. When I asked if that meant that he would have to read the statutes and cases himself rather than rely on a lawyer in respect of a legal issue, the

astonishing answer was yes. This is simply untenable. All that happened here was that the CBO asked the planner for advice as to compliance with the zoning, was advised that the proposal complied, accepted that advice and acted upon it in the course of making the decision to issue the permit. He acted entirely properly in so doing. The case is not at all comparable to cases where the decision to act was made by someone else and then ratified by the proper person⁵. (emphasis added)

While this opinion of the Judge was not the primary basis for rejecting the appellants' argument', it does nonetheless indicate the Judge's view that a CBO is entitled to seek appropriate advice as to compliance with an applicable law, accept the advice and act upon it in the course of making decision to issue a permit.

LIMITS

While a CBO may be entitled to seek advice from other persons about compliance with applicable law in respect of the decision to issue a permit, there are limits.

In the first place, as was noted in the *Albert Bloom* case, the ultimate decision may not effectively be made by another person and then merely ratified by the CBO. This would result in an unlawful subdelegation (i.e., a delegation that was not authorized by the BCA) by the CBO of his or her statutory duty to make the decision.

In the second place, a CBO in making a decision about issuing a permit must not be influenced by extraneous considerations⁸,

Jeff Levitt, Senior Counsel Ministry of Municipal Affairs and Housing

- 1. This article is intended to convey general information rather than legal advice about the matters discussed herein. Readers requiring legal advice about these matters should consult their solicitors.
- 2. A number of cases have held that zoning by-laws are "applicable law", including:

Axelrod v. Toronto (City) (1981) 15 MPLR 143 (Divisional Court):

Woodglen & Co. Ltd., v. North York (City) (1983) 42 OR (2d) 385 at 386 (Divisional Court); and.

Friends of McNichol Park v. Burlington (City) (1996) 36 MPLR (2d) 235 at 240 (Divisional Court).

- 3. (1996) 26 OR (3d) 681 (OC(GD)) affirmed 31 OR (3d) 317 (OCA)
- 4. (1996) 29 OR (3d) at 699
- 5. (1996) 29 OR (3d) at 699
- The Judge's comments are what is called obiter dictum - an opinion not necessary to a judgment and therefore not binding as a precedent.
- A helpful discussion of the issue of unauthorized subdelegation, as it applies to the issuance of orders, is provided in the case of *Pearlman v. Winnipeg (City)* (1992) 90 DLR (4th) 38 at 47, 57-59 (Manitoba CA), leave to appeal to Supreme Court of Canada refused [1992] 6 WWR 647 and [1993] 2 WWR lx.
- 8. For example, in Ernted Investments Ltd. v. Toronto (City) (1989) 44 MPLR 173 at 185 (District Court) where the Judge stated that the municipal council "imposed upon the [CBO's] better judgement to such an extent that they brought about an improper result"; and in Lepage v. Archipelago (Township), unreported decision of the District Court of Ontario, released July 7, 1989, where the Judge stated that "the township, through council, attempted to influence or interfere with the decision ... of the [CBO]".

Ruilding Code Act 1992



Jeff Levitt

Legal Services Branch

DECISIONS OF A CHIEF BUILDING OFFICIAL - PART 21

The Building Code Act, 1992 ("BCA") provides the Chief Building Official ("CBO") with the authority to issue a number of instruments, including: building and change of use permits (s.8(2), 10(2)), conditional permits (s.8(3)), orders to uncover (s.13(6)), stop work orders (s.14(1)), orders prohibiting the use or occupancy of an unsafe building (s.15(5)(a)) and emergency orders (s.17(1)).

Must a CBO personally issue each of these instruments, or is the CBO entitled to seek assistance in the issuance of these instruments (i.e., to rely on reports prepared by others or to authorize others to sign documents for the CBO)?

While the BCA does not explicitly authorize a CBO to delegate his or her powers, this does not necessarily mean that the CBO must personally undertake all investigations, analyses, etc... prior to issuing a permit or order or must personally sign each permit or order. The degree to which the CBO must be involved in these actions will depend upon the nature of the power at issue. Where the exercise of the power involves no discretion on the part of the CBO (i.e., issuance of building permits where there is compliance with BCA s.8(2)), greater reliance by the CBO on staff would be acceptable. Where the exercise of the power involves discretion on the part of the CBO (i.e., the decision to issue an order or a conditional permit), the CBO may still rely upon staff but must take care to ensure that the exercise of the discretion remains that of the CBO in each particular case.

RULE AGAINST UNAUTHORIZED DELEGATION

In general, a power conferred on one administrative authority can be delegated to another public officer only where the applicable legislation expressly or impliedly provides for such delegation. Whether a court will infer an implied authority to delegate a power seems to depend on the nature of the power at issue. In general, where the exercise of the power requires little or no discretion,

courts are more likely to infer an implied authority to delegate the power. Where, on the other hand, the exercise of the power involves discretion, courts are less likely to infer an implied authority to delegate the power.²

The BCA does not expressly authorize a CBO to delegate his or her powers.³ As a result, the validity of any purported delegation of powers by a CBO to another person may be subject to a challenge on the basis that it is a delegation that is not authorized by the BCA (particularly where the delegated power involves the use of discretion, such as the issuance of an order or a conditional permit).

RELIANCE ON STAFF

The fact the delegation of powers by a public official may not be authorized by the applicable legislation does not necessarily mean that the public official must personally carry out all actions necessary to exercise the power at issue. A decision of the Manitoba Court of Appeal in Pearlman v. Winnipeg (City)4 indicates that, even where a delegation of a power is not specifically authorized, the public official may in the exercise of the power utilize the assistance of staff to prepare reports for the official's consideration and may, subject to certain conditions, authorize staff to use a stamp or stencil of the official's signature or to issue signed documents on the official's behalf.

The Pearlman case considered the City of Winnipeg Act, which provided that a medical officer of health ("MOH") who was satisfied after inspection that a building did not comply with the provisions of that Act could issue a notice requiring remedial work or demolition, but did not expressly authorize the MOH to delegate to departmental staff the power to issue these notices. It was alleged that certain notices bearing the imprint of a stamp purporting to be the signature of the MOH were unlawfully issued as the MOH in fact had no knowledge, direct or indirect, of the condition of the subject properties and that the notices were the product of other staff within the department who used a stamp or blank sheet of paper with a stamp already in place without specific authorization.

The Manitoba Court of Appeal set out the following principles in respect of the extent to which the MOH could, in the exercise of the non-delegable power to issue notices, rely on the assistance of staff:

The question of [the MOH's] rubber stamp signature was before this court on a previous occasion. The court then said that it was not objectionable for a rubber stamp to be used, but the court's decision was predicated on the evidence that prior to its use [the MOH] would authorize the use. It was never contemplated that [the MOH's] rubber stamp signature would be used without his specific authority in each case. It was said that [the MOH] did not have to make personal inspections of property in order to exercise his right to determine that a property was insanitary, but it was contemplated he would personally act on the information received from health inspectors. Otherwise there would be an egregious breach of the [rule against unauthorized delegation |. 3

... No doubt [the MOH] is not required to investigate every situation. He is entitled to rely upon what is reported to him by health officers employed in the

department. Nor must he personally sign every notice or letter which proceeds under his signature. He can use a stamp or stencil, and he can authorize others to place the imprint of his signature upon documents, or authorize the use of a sheet of paper that already bears the imprint ...

What cannot be countenanced, however, is the use of the signature stamp without the knowledge and authority of [the MOH]. The medical officer of health cannot delegate his authority to issue a closing notice, or a demolition order. He cannot give a blanket authority to members of his staff to do whatever they might wish in his name, even though he might have well placed confidence in those employees ...

The Court of Appeal ultimately determined that the notices were not invalidated simply by reason of the fact that the stencilled signature of the MOH appeared on the documents, as the evidence did not establish that the decision to issue the documents was not authorized by the MOH after having received reports from members of his staff.

NON-DISCRETIONARY POWERS OF CBO

A CBO has no discretion to refuse to issue a building permit where a person has fulfilled the requirements set out in BCA s.8(2)(a) -(d). While it might be possible to argue that there exists an implied authority under the BCA for a CBO to delegate the power to issue permits in these circumstances. I am not aware of any cases which specifically address this question. The Pearlman case would seem to indicate, however, that a CBO can authorize others to issue permits in the CBO's name where the decision to issue the permit would still be that of the CBO. This would arguably be the case where: the permit was authorized to be issued in the CBO's name only in situations where the CBO was under a duty to do so (when there was compliance

with the requirements set out in BCA

s.8(2)(a) - (d)); the procedures for determining compliance with these requirements were clearly documented; and, all cases not coming within the guidelines were required to be brought to the CBO's attention.

DISCRETIONARY POWERS OF CBO

As noted above, courts are not likely to imply an authority to delegate powers involving the exercise of discretion (discretionary powers under the BCA include the issuance of orders to conditional permits*). The Pearlman case would seem to indicate. however, that a CBO may rely on the assistance of other staff members in determining whether to exercise the CBO's discretion under the BCA, and may even authorize others to issue orders bearing the CBO's signature, so long as the CBO was informed as to the particular circumstances in each case and the decision to exercise the discretion was, in each case, the CBO's decision. This would seem to require that the CBO have some involvement in each such decision.

- This article is intended to convey general information rather than legal advice about the matters discussed herein. Readers requiring legal advice about these matters should consult their solicitors.
- 2. R. Dussault and L. Borgeat Administrative Law (2d) vol. 1 at 255, vol. 4 at 163-64, 166, 167
- Section 28(o) of the Interpretation Act would, however, appear to authorize the appointment of a Deputy CBO to exercise a CBO's powers when the CBO was unable to act (i.e., due to illness, incapacity or absence).
- (1992) 90 DLR (4th) 38 (Manitoba CA), leave to appeal to Supreme Court of Canada refused [1992] 6 WWR 647 and [1993] 2 WWR lx
- 5. (1992) 90 DLR (4th) 38 at 47 per O'Sullivan JA
- 6. (1992) 90 DLR (4th) 38 at 58 per Huband JA
- 7. Woodglen and Co. v. North York (City) (1984) 47 OR (2d) 614 at 619 (Div. Ct.), Shell Canada Products Ltd. v. Barrie (City) (1992) 11 MPLR (2d) 42 at 47 (OC(GD)), Sixteenth Warden Ltd. v. Markham (Town) (1993) 18 MPLR (2d) 70 at 75 (OC(GD)), Alaimo v. York (City) (1995) 26 MPLR (2d) 69 at 74 (OD(GD))
- 8. The applicable BCA provisions provide that a CBO "may" issue an order or a conditional permit.

CBO has the discretionary power to make an Order to Uncover under Subsection 13(6), a Stop Work Order under Subsection 14(1) and an Order to Suspend Construction under Subsection 15.21-(1) of the Act. To the extent that a RCA having jurisdiction has authority to make an OTU and a SWO, the same principle applies to an			cilitato cipant			
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1.	To what extent can the CBO rely on Building Department Staff to make certain Orders* (discretionary powers) and issue Permits (non-discretionary powers) on his or her behalf under the BCA?
_	
_	

- 2. In the space provided, note any comment, concern or question and complete the Table by inserting a check mark "✔" to indicate whether the duty or authority is discretionary or non-discretionary and whether it can or cannot be delegated to staff. During the course, the facilitator will respond to any comment, question or concern you may have.
- (a) Authority of CBO to issue or refuse permits under Subsections 8.-(2), 8.-(3) and 10.-(2) of the BCA.

BCA cannot be discretionary can be nonreference authority discretionary delegated delegated for CBO authority to staff to staff authority 8.-(2) 8.-(3)

Facilitator / Self-Study
Participant Note: Where
the Building Department
has multiple staff, the CBO
should be appraised of the
decision to refuse the
permit, under Subsection
8.-(2) or 10.-(2) before the
applicant is so informed.

10.-(2)

(b)	Duty of CBO to decide on permit application within the period prescribed in Article 1.3.1.3. of Division C.
Įt.	BCA Subsection 8(2.2)]

BCA/OBC reference for CBO duty	discretionary duty	non- discretionary duty	can be delegated to staff	cannot be delegated to staff
8(2.2) Div. C, 1.3.1.3.				

(c) Duty of CBO, under Clause 1.3.1.3.(1)(a) of Div. C, to provide all of the reasons, in writing, to the applicant for refusing to issue a building or demolition permit. [BCA Subsection 8.-(2.3)]

Facilitator / Self-Study
Participant Note: Where
the Building Department
has multiple staff, the CBO
should be appraised of the
decision to refuse the
permit, under Subsection
8.-(2) or 10.-(2) before the
applicant is so informed.

BCA/OBC reference for CBO duty	discretionary duty	non- discretionary duty	can be delegated to staff	cannot be delegated to staff
8(2.3) Div. C, 1.3.1.3.(1)(b)				

Facilitator / Self-Study
Participant Note: To the
extent that a RCA having
jurisdiction has authority
to forward information to
OAA and PEO, the same
principle applies to an
RCA.

(d)	Authority of CBO to refer drawings, plans or specifications
	accompanying applications for permits or the reports
	arising out of the general review of the construction of a
	building to the Association of Professional Engineers of
	Ontario or the Ontario Association of Architects for the
	purpose of determining if the <i>Professional Engineers Act</i> of the <i>Architects Act</i> , is being contravened.
	of the Architects Act, is being contravelled.

BCA reference for CBO authority	discretionary authority	non- discretionary authority	can be delegated to staff	cannot be delegated to staff
8(9)				

e) Duty of CBO to forward drawings, plans or specifications accompanying applications for permits or the reports arising out of the general review of the construction of a building to the Association of Professional Engineers of Ontario or the Ontario Association of Architects for the purpose of determining if the *Professional Engineers Act* of the *Architects Act*, is being contravened when requested to do so by the respective association.

BCA reference for CBO duty	discretionary duty	non- discretionary duty	can be delegated to staff	cannot be delegated to staff
8(9.1)				

t)	Authority of CBO to revoke permits under Clauses 8(10)(a) to (f).
_	
_	

BCA reference for CBO authority	discretionary authority	non- discretionary authority	can be delegated to staff	cannot be delegated to staff
8(10) (a) to (f)				

Facilitator / Self-Study / Participant Note: The authority to authorize a material change to the permit information is similar to the authority to issue or refuse a permit.

(g)	Authority of CBO, under Subsection 8(12) of the BCA, to
	authorize a material change to a plan, specification
	document or other information on the basis of which a
	permit was issued.

BCA reference for CBO authority	discretionary authority	non- discretionary authority	can be delegated to staff	cannot be delegated to staff
8(12)				

(h)	Duty of CBO, under Subsection 8(14) of the BCA, to accept a request to authorize a material change to a plan, specification, document or other information on the basis of which a permit was issued when the request is accompanied by the Change Certificate of the appointed RCA and contains the information prescribed in Sentences 3.7.4.3.(1), (2), (4) and (7) of Division C.

BCA/OBC reference for CBO duty	discretionary duty	non- discretionary duty	can be delegated to staff	cannot be delegated to staff
8(14) Div. C, 3.7.4.3.				

(i) Duty of CBO, under Subsection 14.-(7) of the BCA, to enforce a Stop Work Order and any Order in respect of the matter, that was referred to him/her by the RCA in the manner described in Subsection 3.7.7. of Division C.

BCA/OBC reference for CBO duty	discretionary duty	non- discretionary duty	can be delegated to staff	cannot be delegated to staff
14(7) Div. C, 3.7.7.				

	to review, arms	end or rescind	orders.	
BCA reference for CBO authority	discretionary - authority	non- discretionary authority	can be delegated to staff	cannot be delegated to staff
14(8) 22(1)				
Remedy Prohibit Subsecti- measure	Unsafe Buildin Use or Occ on 15.9-(8), Er s taken to terr	cupancy of U mergency Orde minate the imn	ection 15.9-(Insafe Buil er and stater nediate dan	(5), Order ding und ments of t ger and t
Remedy Prohibit Subsecti measure costs the	Unsafe Buildin Use or Occ on 15.9-(8), Er	ng under Subsecupancy of Undergency Order minate the imnubsections 15.1	ection 15.9-(Insafe Buil er and stater nediate dan	(5), Order ding und ments of t ger and t
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Remedy Prohibit Subsecti measure costs the	Unsafe Buildin Use or Occ on 15.9-(8), Er s taken to terr ereof under Su	ng under Subsecupancy of Undergency Order minate the imnubsections 15.1	ection 15.9-(Insafe Buil er and stater nediate dan	(5), Order ding und ments of the ger and t

15.10-(6) 15.21-(5)

(1)	Authority of CBO, under Clause 15.9-(6)(a) of the BCA, to make an Order to Prohibit the Use or Occupancy of an Unsafe Building that is not in compliance with an Order to Remedy Unsafe Building.

BCA reference for CBO authority	discretionary authority	non- discretionary authority	can be delegated to staff	cannot be delegated to staff
15.9-(6)(a)				

(m) Authority of CBO, under Clause 15.9-(6)(b) of the BCA, to cause an unsafe building that is not in compliance with an Order to Remedy Unsafe Building to be renovated, repaired or demolished to remove the unsafe condition or take such action as he/she considers necessary for the protection of the public.

BCA reference for CBO authority	discretionary authority	non- discretionary authority	can be delegated to staff	cannot be delegated to staff
15.9-(6)(b)				

reference

for CBO

15.10-(2)

		make an Eme tion 15.10-(1) o		er under th
BCA reference for CBO authority	discretionary authority	non- discretionary authority	can be delegated to staff	cannot be delegated to staff
15.10-(1)				
(o) Duty o	of CBO to posi	t Emergency C	Order.	
BCA	discretionary	non-	can be	cannot be

discretionary

duty

delegated

to staff

delegated

to staff

duty

after autho	the Emergence	mergency Ord by Order is sen ny reasonable diate danger.	rved, the Cl	BO has the
BCA reference for CBO authority	discretionary authority	non- discretionary authority	can be delegated to staff	cannot be delegated to staff
15.10-(3)				
of the Justic soon work provid	e BCA, to apple for an Order as practicable done to ter	r the authority ply to the One confirming the after the staminate the interest the amount served.	tario Superi e Emergeno tements de nmediate	or Court of cy Order, as scribing the danger and
BCA reference for CBO duty	discretionary duty	non- discretionary duty	can be delegated to staff	cannot be delegated to staff
15.10-(7)				

(r)	Authority of CBO to make an Order to Suspend all or part of
()	the Construction of the building to which the appointment relates if the CBO has reason to believe that the RCA has ceased to perform the functions specified in the appointment when the appointment of the RCA has not expired or been terminated.
_	

BCA reference for CBO authority	discretionary authority	non- discretionary authority	can be delegated to staff	cannot be delegated to staff
15.21-(1)				

(s) The duty of the CBO to forward to the Director a copy of the notice of the termination of the RCA and such other information as may be required by the Director when the CBO has refused to issue a permit for the specified building or has revoked the permit.

OBC discretionary noncan be cannot be delegated reference duty discretionary delegated for CBO to staff to staff duty duty Div. C. 3.7.6.1.(1)

(t)	The duty of the CBO to forward a copy of the Order To Suspend Construction to the Director along with such other information concerning the circumstances of the OTSC as may be required by the Director.
_	

OBC reference for CBO duty	discretionary duty	non- discretionary duty	can be delegated to staff	cannot be delegated to staff
Div. C, 3.7.6.1.(2)				

Facilitator / Self-Study
Participant Note: To the
extent that a RCA having
jurisdiction has authority
to forward information to
OAA and PEO, the same
principle applies to an
RCA

- 3. Under the BCA, the CBO has the authority to refer drawings, plans or specifications accompanying applications for permits or reports arising out of the general review of the building to the Association of Professional Engineers of Ontario or the Ontario Association of Architects to determine if:
 - (a) the proposed construction or the construction, as the case may be, comply with the Ontario Building Code
 - (b) an Authorization by the Building Materials Evaluation Commission is required or valid, as the case may be
 - (c) the Building Code Commission can deal with a dispute involving the sufficiency of compliance with Part 4 of the OBC
 - (d) the *Professional Engineers Act* or the *Architects Act*, as the case may be, is being contravened.

BCA reference:				

- 4. According to the BCA, a CBO that receives a written request, from the Association of Professional Engineers of Ontario or the Ontario Association of Architects, for a copy of drawings, plans or specifications accompanying an application for a permit or reports arising out of the general review of the building, the CBO:
 - (a) must comply with the request

BCA reference:

- (b) may comply with the request if it is deemed reasonable
- (c) must comply with the request only if it is deemed reasonable
- (d) may refer the request to the Minister of Municipal Affairs and Housing for a binding interpretation

5.	When the CBO decides to revoke a permit, should the CBO inform the former permit holder that he/she may appeal the decision to the Ontario Superior Court of Justice or should the person find out on his/her own?			
6.	Clause 15.9-(6)(a) of the BCA empowers the CBO to make an order to prohibit the use or occupancy of the building if the OTRUB made by an inspector is not complied with within a reasonable time where no time is specified. In your opinion, what constitutes a "reasonable time" when no time is specified in the OTRUB?			

	an EO is required rather than an OTRUB?			
8.	Subsection 15.10-(4) indicates that a municipality, the CBO, Building Inspectors and their agents (contractors) are not			
	liable to compensate the owner, occupant or any person by reason of anything done in the reasonable exercise of the power of the CBO to take any measures necessary to terminate the immediate danger. In your own words, qualify the word "reasonable".			
_				

- 9. An accessory building was converted to a dwelling without a permit. The situation is also contrary to zoning as only one dwelling per lot is permitted. The owner was charged for building without a permit, under Part I of the *Provincial Offences Act*. The owner paid the fine. The CBO wants the illegal use of land terminated and the building restored for its original use or removed. His/her best option is to:
 - (a) make an Order to Demolish the illegal building
 - apply to the Ontario Court of Justice for a Restraining Order
 - (c) apply to the Superior Court of Justice for a Restraining Order
 - (d) commence a proceeding under Part III of the Provincial Offences Act for the zoning infraction and on conviction ask the court for a Restraining Order prohibiting the continuation of the offence against the Zoning By-law

BCA reference:	
Justification for my choice.	

STOP

DELEGATION OF PRINCIPAL AUTHORITY'S AUTHORITY TO ITS CBO OR INSPECTOR WHO HAS THE SAME POWERS AND DUTIES AS THE CBO IN RELATION TO PLUMBING OR SEWAGE SYSTEMS

Subsection 3.-(1) of the BCA assigns to the council of each local municipality the responsibility for the enforcement of the Act and the provisions of the OBC, except where otherwise provided by the BCA. In the main, council is responsible to select an enforcement model, appoint staff and enact a Building By-law.

Under the *Building Code Act*, a Principal Authority also has the authority:

- 1- to appoint an RCA already under agreement, [BCA Subsections 4.1-(1) and (2)]
- 2- to administer an agreement to share reviews of plans for buildings that are substantially similar, and [BCA Clauses 6.-(1)(a) to (f)]
- 3- to enter into an agreement for a Conditional Permit. [BCA Subsection 8.-(3)(c)]

In each of those three instances, the authority of the Principal Authority may be delegated to its CBO or Inspector who has the same powers and duties as the CBO in relation to sewage systems or plumbing, as the case may be.

NOTA BENE:

The Inspector who has the same powers and duties as the CBO in relation to plumbing is not empowered to deal with Conditional Permits. [BCA Subsection 6.1-(5)]

Exercise #3 - BCA AUTHORITY OF PRINCIPAL AUTHORITY WHICH CAN BE DELEGATED TO ITS CBO OR INSPECTOR WITH THE POWERS AND DUTIES OF A CBO

Deal with the questions in the ususal way.

 For each authority that can be delegated to its CBO or Inspector who has the powers and duties of a CBO, as the case may be, by the Principal Authority, insert the BCA reference for the delegation of authority, the manner of delegation and whether any conditions or restrictions may be imposed on how the delegated authority is to be performed.

Authority of Principal Authority to:	BCA reference for delegation of authority	Manner of delegation ⁽¹⁾	Authority to impose conditions or restrictions on delegation
appoint a RCA under agreement			
administer reciprocal plans review agreements			
except for plumbing permits, enter into agreements to issue conditional permits			

⁽¹⁾ Section 5 of the *Municipal Act* informs us that the powers of a municipality are to be exercised by its council and shall be exercised by by-law unless the municipality is specifically authorised to do otherwise in which case it can be by resolution. As the *Building Code Act* is silent on how Council should proceed in exercising its power of delegation, the preferred manner of delegation is by by-law.

⁽¹⁾ A board of health would similarly enact a by-law.

⁽¹⁾ In the same manner, a conservation authority would enact a regulation.

- 2. For each authority that can be delegated by a Principal Authority to its CBO note any comment, question or concern in the space provided and complete the Table by indicating whether the delegated authority is discretionary or non-discretionary and whether or not it can in turn be delegated to staff. During the course, the facilitator will respond to any comment, question or concern you may have.
- (a) Under Subsection 4.1-(3) of the BCA, a Principal Authority is empowered to delegate its authority to appoint a RCA under agreement to its CBO. The delegation must be in writing and may impose conditions or restrictions on the CBO in making the appointment.

BCA discretionary noncan be cannot be reference authority discretionary delegated delegated for CBO to staff authority to staff authority 4.1 - (3)

(b) A Principal Authority is empowered by Subsection 6.-(2) of the BCA to delegate to its CBO the authority to make such decisions, under a reciprocal plans review agreement, as may be necessary for the implementation of the agreement.

BCA discretionary noncan be cannot be reference authority discretionary delegated delegated for CBO authority to staff to staff authority 6.-(2)

(c)	A Principal Authority that is a local municipality, upper-tier
	municipality, board of health or conservation authority is
	empowered, under Subsection 8(3.1) of the BCA to
	delegate in writing to its CBO, the power to enter into
	Conditional Permit Agreements under Clause 8(3)(c) of the
	BCA. The written delegation may impose conditions or
	restrictions.

BCA reference for CBO authority	discretionary authority	non- discretionary authority	can be delegated to staff	cannot be delegated to staff
8(3.1)				

STOP

EFFECT OF APPOINTMENT, EXPIRATION AND TERMINATION OF AN RCA'S APPOINTMENT

EFFECT OF THE APPOINTMENT OF A RCA

A RCA must perform the functions specified in the appointment for the construction of a specified building or class of buildings. [BCA Subsection 4.1-(6)]

BEGINNING AND ENDING OF A RCA'S APPOINTMENT

According to Subsection 4.1-(7) of the Act, the duty of the RCA to perform those functions:

- begins when the appointment is made,

and

 ends when the appointment expires as described in Section 15.19.

or

 ends when the appointment is terminated in accordance with Section 15.20.

EXPIRY OF THE APPOINTMENT OF A RCA

The appointment of a Registered Code Agency expires if the:

 RCA has performed all of the functions for which it was appointed in respect of the construction of the specified building,

[BCA Subsection 15.19-(1)]

or

2- CBO refuses to issue the permit for the construction of the specified building, [BCA Paragraph 15.19-(2) 1.]

or

3- permit for the construction of the specified building is revoked. [BCA Paragraph 15.19-(2) 2.1

TERMINATION OF THE APPOINTMENT OF A RCA

The word "termination" means that the role of the RCA did not expire and the appointment was terminated before the RCA had performed all of the functions for which it was appointed in respect of the construction of a building.

The appointment of a RCA can only be terminated in accordance with:

- Section 15.20 of the BCA,

and

Div. C, Subsections 3.7.5. and 3.7.6. of the building code.
 [BCA Subsection 15.20-(1)]

The Principal Authority becomes responsible to ensure that the remaining functions of the Agency are performed by either the Principal Authority or another RCA. [BCA Subsection 15.20-(3)]

When the appointment of a RCA is terminated, the Director of the Building and Development Branch of the Ministry of Municipal Affairs and Housing may give binding directions to:

- ✓ the Principal Authority or the CBO who made the appointment that is being terminated and
- ✓ to the RCA whose appointment has been terminated or
- ✓ to the replacement Registered Code Agency.
 [BCA Subsections 15.20-(5), (6) and (7)]

According to Sentence 3.7.5.1.(1) of Division C, a Principal Authority may, in accordance with the terms of an agreement under Subsection 4.1-(1), terminate the appointment of a RCA before the appointment expires under Section 15.19 of the Act.

Sentence 3.7.6.1.(1) of Division C goes on to say that the Principal Authority must, as soon as possible after the termination, give to the Director of the Building and Development Branch notice of the termination and such other information concerning the circumstances of the termination and as may be required by the Director.

EXERCISE # 4- EXPIRATION AND TERMINATION OF THE APPOINTMENT OF A RCA

Answer the following questions and when prompted, support your answer with appropriate references.

- A consideration of Sections 15.19 and 15.20 of the BCA, indicates that the words "expire" and "termination" are synonymous.
 - a) True
 - b) False

- According to the OBC, the consent of the Director of the Building and Development Branch of the Ministry of Municipal Affairs and Housing is required before a Principal Authority can terminate the appointment of a Registered Code Agency that has not performed all of the functions for which it was appointed.
 - a) True
 - b) False
- 3. The authority of a Principal Authority to terminate the appointment of a RCA that has not performed all of the functions for which it was appointed lies with:
 - a) the authority of the Chief Building Official
 - b) the terms of the agreement under Subsection 4.1-(1)
 - c) the authority of the Director
 - d) the terms of the appointment under Subsection 4.1(2)

OBC reference:	

- 4. A Registered Code Agency that becomes or expects to become unable to carry out functions for which it was appointed shall as soon as possible give notice to the:
 - a) Chief Building Official
 - b) Director of the Building and Development Branch
 - c) CBO or the Director
 - d) Chief Building Official and the Director

OBC references:	

STOP

AUTHORITY OF CBO TO SUSPEND CONSTRUCTION

Under Subsection 15.21-(1) of the BCA, the CBO may make an Order To Suspend Construction (OTSC) **if** the CBO has reason to believe that:

✓ the RCA has ceased to perform the functions specified in the appointment, [BCA Clause 15.21-(1)(a)]

and

✓ the appointment has not expired or been terminated.
[BCA Clause 15.21-(1)(b)]

EXERCISE # 5- O R D E R T O S U S P E N D CONSTRUCTION BY A CBO

Standard procedures apply in dealing with the following questions.

- 1. The form of the OTSC is prescribed:
 - a) in the Building Code Act or the Ontario Building Code, as the case may be
 - b) in the Instrument of the Principal Authority enacted under the BCA
 - c) by the Director of the Building and Development Branch of the Ministry of Municipal Affairs and Housing
 - d) by the Chief Building Official having jurisdiction

BCA	references:		

- 2. The OTSC becomes effective from the time it is:
 - a) made
 - b) served
 - c) received
 - d) posted

BCA references:

- Under the BCA, the CBO is empowered to make an OTSC if the CBO has reason to believe that:
 - a) the RCA's person with the qualifications under Div. C, Clause 3.4.3.2.(1)(a) is away on holidays
 - an Order To Comply, made by a person authorised by a RCA, has not been complied with
 - the RCA has ceased to perform the functions for which it was appointed
 - d) the RCA should have made a Stop Work Order under the authority of Subsection 14.-(1) of the BCA

BCA reference:		
DO/ 11010101100		

- 4. After the OTSC has been posted, no person shall perform any work in respect of the construction of the building other than work necessary to:
 - a) secure the safety and security of the building and of the construction site
 - b) comply with the OTC under Subsection 12.-(2) of the BCA
 - c) comply with the ONTCOE under Subsection 13.-(1) of the BCA
 - d) comply with the OTU under Subsection 13.-(6), of the BCA

BCA refe	rence:			
20111010				

- 5. The manner in which the OTSC is served and posted is the same as for the:
 - a) Order To Comply
 - b) Order Not To Cover
 - c) Order To Uncover
 - d) Stop Work Order

BCA references:	
DCA references.	

- 6. An OTSC may be served to a person's agent.
 - a) True
 - b) False

BCA reference:

STOP

FEES FOR PERMITS

While the payment and refund of fees for permits under the BCA is regulated by the Instrument enacted by a Principal Authority under the authority Clauses 7.-(1)(c) and (d), the CBO or the Inspector with the powers and duties of a CBO is the most likely person that will advise the Principal Authority on the requirements of the BCA and the OBC in this regard. This is not an exercise; nonetheless in the space provided note any comment question and concern. The facilitator will address them during class.

ESTABLISHING FEES FOR PERMITS

In the Instrument, the Principal Authority can enact for the payment of fees on applications for and issuance of permits and prescribing the amounts thereof.

[BCA Clause 7.-(1)(c)]

The CBO is empowered to refuse to issue a permit to construct or demolish or a conditional permit **if** any fees due have not been paid.

[BCA Clause 8.-(2)(f)]

Similarly, the CBO is empowered to refuse to issue a change-ofuse permit **if** any fees due are unpaid. [BCA Clause 10.-(2)(c)]

PROVIDING FOR REFUNDS OF PERMIT FEES

In the Instrument, the Principal Authority can enact for the refund of permit fees under such circumstances as are prescribed. [BCA Clause 7.-(1)(c)]

PERMIT FEES AND THE COSTS OF ADMINISTRATION AND ENFORCEMENT

The total amount of fees collected for permits must not exceed the anticipated reasonable costs of the Principal Authority to administer and enforce the BCA in its area of jurisdiction. [BCA Subsection 7.-(2)]

ANNUAL REPORT ON PERMIT FEES

Every 12 months the Principal Authority must prepare a report on the permit fees collected and its costs to administer and enforce the BCA and the provisions of the Code in its area of jurisdiction.

[BCA Subsection 7.-(4)]

The report on permit fees must contain the:

 total fees collected in the 12 month period ending no earlier than three months before the release of the report, [Div. C, Clause 1.9.1.1.(1)(a)]

and

 direct and indirect costs of delivering services related to the administration and enforcement of the BCA and the provisions of the Code in the 12 month reporting period, [Div. C, Clause 1.9.1.1.(1)(b)]

and

the amount of any reserve fund at the end of the 12 month reporting period.
 [Div. C, Clause 1.9.1.1.(1)(d)]

A break-down of the costs of delivering services related to the administration and enforcement of the BCA to include at least:

the direct costs of reviewing applications for permits,
 [Div. C, Subclause 1.9.1.1.(c)(i)]

and

the indirect overhead and support costs.
 [Div. C, Subclause 1.9.1.1.(1)(c)(ii)]

The annual report must be made available to the public as prescribed in the OBC.

[BCA Subsection 7.-(5)]

The Principal Authority must give notice of the preparation of the report to every person and organization that has requested a copy thereof and provided its mailing address to receive the report.

[Div. C, Sentence 1.9.1.1.(2)]

CHANGES IN PERMIT FEES

Before a Principal Authority decides to change any permit fee payable on application for a permit or for the issuance of a permit, the Principal Authority must:

 give notice of the proposed changes in fees, [BCA Clause 7.-(6)(a)]

and

2. hold a public meeting concerning the proposed changes. [BCA Clause 7.-(6)(b)]

At the public meeting, any person who attends must be given the opportunity to make representations with respect to permit fees.

[Div. C, Clause 1.9.1.2.(1)(a)]

The notice of the public meeting dealing with the proposed changes to permit fees must be given as prescribed.

[BCA Subsection 7.-(7)]

A minimum of 21 days notice of the public meeting must be given to every person and organization, who in the last five years before the day of the public meeting, had requested a copy thereof and provided its mailing address to receive the report.

[Div. C, Clause 1.9.1.1.(1)(b)]

The notice must:

 set out the intention of the Principal Authority to impose any fee that was not in effect on the day the notice is given or would change any fee that was in force on the day the notice is given,

[Div. C, Subclause 1.9.1.2.(1)(c)(i)]

and

 be sent by regular mail to the last address of the person or organization that requested a copy thereof, [Div. C, Subclause 1.9.1.2.(1)(c)(ii)]

and

 contain or state that the following information is available to the public;

[Div. C, Subclause 1.9.1.2.(1)(c)(iii)]

 an estimate of the costs of administering and enforcing the BCA,

[Div. C, Subclause 1.9.1.2.(1)(d)(i)]

and

 the amount of the new fee or the change to the existing fee,

[Div. C, Subclause 1.9.1.2.(1)(d)(ii)]

and

 the rational for imposing the new fee or changing the fee.
 [Div. C, Subclause 1.9.1.2.(1)(d)(iii)] The public meeting dealing with the proposed changes to permit fees must be held within the prescribed period before the changes are made.

[BCA Subsection 7.-(8) and Div. C, Clause 1.9.1.2.(1)(b)]

THE INSTRUMENT UNDER SECTION 7 OF THE BUILDING CODE ACT and ALTERNATIVE SOLUTIONS

The Instrument of the Principal Authority, enacted under the authority of Section 7 of the *Building Code Act*, be it a By-law, Resolution or Regulation, will need to be amended.

In the first instance, the CBO will have to give consideration to the costs associated with the assessment of *alternative solutions*. Consequently, the sections of the instrument dealing with Classes of Permits under Clause 7.-(1)(a) and Payment of Fees under Clause 7.-(1)(c) will need to be amended to deal with *alternative solutions* as opposed to equivalents.

In the second instance, the section of the Instrument dealing with Requirements for Applications under Clauses 7.-(1)(b) and (f) will need to be amended to deal with *alternative solutions* as opposed to equivalents.

For guidance in amending the Instrument enacted under the authority of Section 7 of the *Building Code Act*, consult "A Guide to Preparing a Municipal Building By-law".



MODULE THIRTEEN -B-POWERS AND DUTIES OF THE CBO OR RCA HAVING JURISDICTION Facilitator / Self-Study / Participant Note: Module 13 -B- is for those Building Code Act Practitioners that intend to challenge the Legal/Process examination for a Chief Building Official or a Registered Code Agent.

Facilitator / Self-Study
Participant Note: The term
Person authorized by the
RCA means a person
authorized in writing under
Section 15.17 and having
the qualifications set out in
Div. C, Clauses
3.4.3.2.(1)(a), (b), (c), as
the case may be.

INTRODUCTION

Under the BCA, a duly appointed RCA has the authority to perform a number of tasks that otherwise belong exclusively to a Chief Building Official or an Inspector. Take note that performance of these tasks cannot create a situation where the two authorities having jurisdiction could exercise a power or perform a duty and create a conflict. When a RCA has not been appointed, the authority lies with the CBO or Inspector. When a RCA has been appointed, the authority lies with the RCA. In Module Thirteen -C-, we will see how the RCA communicates with the CBO.

OBJECTIVES of Module Thirteen -B-

In this Module, you will:

review the powers and duties under the Building Code Act that can be exercised by the CBO, an Inspector or the Registered Code Agency having jurisdiction

POWERS AND DUTIES UNDER THE BCA THAT CAN BE EXERCISED BY EITHER THE CBO OR THE RCA HAVING JURISDICTION

1. * authority to refer plans to PEO and OAA

The CBO or RCA having jurisdiction has the authority to refer drawings, plans or specifications accompanying applications for permits or reports arising out of the general review of the construction of a building to the Association of Professional Engineers of Ontario (PEO)or the Ontario Association of Architects (OAA) to determine if the *Professional Engineers Act* of the *Architects Act*, is being contravened.

[BCA Subsection 8.-(9)]

2. * authority to allow changes to permit information

- (a) The CBO has the authority to allow changes to a plan, specification, document or other information on the basis of which a permit was issued. [BCA Subsections 8.-(12) and (13)]
- (b) When a request for authorization of a change referred to in subsection 8.-(12) or (13) is accompanied by the Change Certificate of the RCA having jurisdiction and it contains the information prescribed in Div. C, Sentences 3.7.4.3.(1), (2) and (4), the CBO is not entitled to refuse to authorize the change on the grounds that the construction of the building to which the Change Certificate relates does not comply with the OBC. [BCA Subsection 8.-(14)]

3. * authority to receive notices of readiness for inspections and authority to carry out inspections

- a) At each stage of construction listed in Div. C, Article 1.3.5.1. and in Article 1.3.5.2. when that is the case, the person to whom the permit was issued under Section 8 of the BCA must notify the CBO or the RCA having jurisdiction that the construction is ready to be inspected. [BCA Subsection 10.2-(1)]
- b) After the notice of readiness for inspection is received by the CBO or the RCA having jurisdiction, the said inspection must be carried out within the period of time prescribed in Article 2.4.5.3. of the OBC by the CBO, Inspector, RCA or Person authorized by the RCA, as the case may be. [BCA Subsection 10.2-(2)]

4.	水	authority	to	allow	the	occupancy	or	use	of	an
		unfinished	d bu	uilding						

The CBO or the RCA having jurisdiction has the authority to allow the occupancy or use of a building or part of a building that is newly erected or installed.

[For a review of the occupancy process see Module Eight]

5. * authority to make an Order To Uncover

The CBO or the RCA having jurisdiction has the authority to make an Order To Uncover. For a review of the order making and issuance process, see Module Seven Exercises # 2 and # 3.

[BCA Subsection 13.-(6). Div. C, Sentence 3.7.4.4.(1)]

6. ★ authority to make a Stop Work Order and determine its recipients

The CBO or the RCA having jurisdiction has the authority to make a Stop Work Order and determine "such other persons" to be served with a copy of the SWO.

[BCA Subsections 14.-(1) and (2), Div. C, Sentence 3.7.4.4.(1)]

7. * authority to authorize the removal of a posted order

The CBO by way of Subsection 22.-(2), an Inspector or the RCA having jurisdiction has the authority to authorize a person to remove a posted order.

[BCA Section 20]

8. * authority to apply to the Building Code Commission to resolve a dispute

- a) if there is a dispute with an applicant for a permit, a holder of a permit or a person to whom an order is given, concerning the sufficiency of compliance with the technical requirements of the Code, the CBO an Inspector, the RCA having jurisdiction, the applicant for a permit, the holder of a permit or the person to whom an order is given may apply to the Building Code Commission to resolve the issue. [BCA Clause 24.-(1)(a) and Subsection24.-(1.1)]
- b) if there is a dispute between a holder of a permit and the CBO or the RCA having jurisdiction concerning whether the requested inspection was carried out within the time prescribed in Article 1.3.5.3. of Div. C after the notice of readiness of inspection was given, the CBO, the RCA having jurisdiction or the holder of a permit may apply to the Building Code Commission to determine the dispute. [BCA Clause 24.-(1)(c) and Subsection 24.-(1.1)]

OTHER SIMILARITIES BETWEEN A PRINCIPAL AUTHORITY AND A REGISTERED CODE AGENCY

1. decisions and orders may be appealed by the aggrieved

A person who considers themselves aggrieved by an order or a decision made by a CBO, the RCA having jurisdiction (including a Person authorized by the RCA under Section 15.17 of the BCA) or an Inspector, may appeal the order or decision to the Ontario Superior Court of Justice and cause further appeals to the Divisional Court.

[BCA Sections 25 and 26]

 [★] authority to enter upon land and into buildings in the exercise of powers and performance of duties under the Building Code Act

Chief Building Officials by way of Subsection 22.-(2), and Persons authorized by the RCA by way of Paragraph 15.17-(3), just like Inspectors appointed by the Council of a Municipality under Subsection 3.-(2) of the *Building Code Act*, have the authority to:

- a) enter upon land and into buildings at any reasonable time without a warrant for the purpose of inspecting the building or site in respect of which a permit is issued or an application for a permit is made,
 [BCA Paragraph 15.17-(3) 1. and Subsection 12.-(1)]
- b) make an OTC directing compliance with the BCA or the OBC and may require the OTC to be carried out immediately or within such time as is specified in it, [BCA Paragraph 15.17-(3) 1. and Subsection 12.-(1)]

_	C)	any part of a building pending inspection, [BCA Paragraph 15.17-(3) 2. and Subsection 13(1)]
_	d)	enter or remain in any room or place actually being used as a dwelling, along with the same restrictions, [BCA Paragraph 15.17-(3) 3., Section 16 and Subsection 19(2)]
_	e)	exercise the powers of an Inspector for the purposes of an inspection, and [BCA Paragraph 15.17-(3) 4. and Section 18]
_	f)	serve an order. [BCA Section 27]
3.	Instance Centre (B)	duty to carry and produce identification then performing BCA duties, Chief Building Officials and spectors are required to carry a Certificate of Appointment; dependent of Persons authorized by the RCA are required to carry a certificate of Authorization and both are required to produce the for inspection upon request. CA Section 15.23 for Building Officials CA Section 15.23 and Div. C, Sentence 3.7.4.5.(3) for RCAs
_		

- a) The Certificate of Appointment
 - The Clerk of the municipality or upper-tier municipality shall issue a Certificate of Appointment bearing the clerk's signature or a facsimile of it to the Chief Building Official and each Inspector appointed by the municipality or upper-tier municipality.
 [BCA Subsection 3.-(8)]
 - ii) The medical officer of health or the secretary-treasurer of the conservation authority shall issue a certificate of appointment bearing his or her signature or a facsimile of it, to each sewage system inspector appointed by the board of health or conservation authority. [BCA Subsection 3.1-(6)]
 - iii) In the case when plumbing is enforced pursuant to an agreement under Section 6.1 of the Act, Subsection 3. (8) applies with necessary modifications.
 [BCA Subsection 6.1-(7)]
 - iv) In the case when sewage systems are enforced pursuant to an agreement under Section 6.2 of the Act, Subsection 3.-(8) applies with necessary modifications. [BCA Subsection 6.2-(6)]

NOTA BENE: Other than requiring the signature of the Clerk, Medical Officer of Health or Secretary-Treasurer, as the case may be, the form of the Certificate of Appointment is unregulated.

b) The Certificate of Authorization

The RCA is responsible to issue a Certificate of Authorization containing the information prescribed in Sentence 3.7.4.5.(2) of Div. C, to each Person authorized by the RCA

[BCA Subsection 15.17-(2)]

The Certificate of Authorization shall be signed by a representative of the RCA who has the qualifications set out in Clause 3.4.3.2.(1)(a) of Div. C, and shall contain:

-the name of the RCA and the identifying number assigned to the RCA by the Director of the BDB, [Div. C. Clause 3.7.4.5.(2)(a)]

and

-the title, business address and telephone number of a representative of the RCA who may be contacted to answer questions about the certificate and the authorization to which it relates,

[Div. C, Clause 3.7.4.5.(2)(b)]

and

-the name of the Person authorized by the RCA and the identifying number issued by the Director of the BDB in respect of that person's qualifications,

[Div. C, Clause 3.7.4.5.(2)(c)]

and

-the scope of the powers that may be exercised and the functions that may be performed by the Person authorized by the RCA,

[Div. C, Clause 3.7.4.5.(2)(d)]

and

-the date of issuance of the Certificate of Authorization. [Div. C, Clause 3.7.4.5.(2)(e)]

4. * BCA protection from obstruction and hindrance by others and duty of others to cooperate

Registered Code Agencies and Persons authorized by the RCA to perform functions on behalf of the RCA, just like Chief Building Officials and Inspectors appointed by a Principal Authority, are similarly protected from obstruction and hindrance and other persons are compelled to cooperate with them. Hindrance, obstruction and failure to cooperate under Section 19, constitute offences under Section 36 of the BCA and the offender may be put on trial by proceedings under the *Provincial Offences Act*.

 a) No person shall hinder or obstruct, or attempt to hinder or obstruct, a Chief Building Official, Inspector or a Person authorized by the RCA in the exercise of a power or the performance of a duty under the BCA.
 [BCA Subsection 19.-(1)]

NOTA BENE:

A refusal of consent to enter or remain in a place actually used as a dwelling is not hindering or obstructing within the meaning of Subsection 19.-(1) unless the Inspector or Person authorized by the RCA is acting under a warrant issued under Section 21 **or** in the circumstances described in Clauses 16.-(1)(b), (c) **or** (d) of the Building Code Act.

b)	Every	person	shall	assist	any	entry,	inspe	ction,
	examin	ation, tes	sting or	inquiry	by	an Insp	pector,	Chief
	Building	g Official	or Pers	on author	orize	d by the	RCA	in the
	exercise	e of a po	wer or	performa	ance	of a du	ity unde	er the
	BCA.							
	IDCA C	ubacation	10 /2	\1				

[BCA Subsection 19.-(3)]

- For the purposes of an inspection under the authority of the BCA, no person shall neglect or refuse to:
 - i) produce any document, drawing, things or specifications required by an Inspector or Person authorized by the RCA under Clause 18.-(1)(a) or (e) of the BCA.
 [BCA Clause 19.-(4)(a)]
 - ii) provide any information required by an Inspector or Person authorized by the RCA under Clause 18.-(1)(c). [BCA Clause 19.-(4)(b)]



MODULE THIRTEEN -C- POWERS AND DUTIES OF THE RCA

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Facilitator / Self-Study / Participant Note: Module 13 -C- is for those Building Code Act Practitioners that intend to challenge the Legal/Process examination for a Chief Building Official or a Registered Code Agent.

INTRODUCTION

In Module Three, you were introduced to the role of the RCA as defined in Subsection 1.1-(5) of the BCA. In this part of Module Thirteen, we will look at the powers and duties that are unique to the RCA in fulfilling its functions under the BCA and the OBC.

OBJECTIVES of Module Thirteen -C-

In this Module, you will:

- * overview the role of the RCA
- ★ determine the requisites for registration of a RCA
- * review the powers and duties of the RCA
- * analyse how the RCA prepares and transfers certificates and records to the CBO

THE ROLE OF THE REGISTERED CODE AGENCY

According to Subsection 1.1-(5) of the BCA, it is the role of the RCA, to:

- 1- exercise powers and perform duties under the BCA and the OBC in connection with:
 - a) reviewing designs and other materials to determine whether the proposed construction complies with the OBC.
 - b) issuing Plans Review Certificates, Change Certificates and Final Certificates,
 - c) inspecting construction of a building for which a permit has been issued,
 [BCA Paragraphs 15.15-(1) 1. to 6.]

and

2- perform other functions as may be authorized in the BCA or the OBC. [BCA Paragraph 15.15-(3) 6.]

NOTA BENE: There is only one other function that is authorized in the Code, that is, the issuance of a Certificate for the Occupancy of a Building not Fully Completed. [Div. C, Sentences 3.7.3.1.(1) and 3.7.4.3.(5)]

3- only carry out those functions in respect of those matters for which the RCA is qualified.

[BCA Subsections 15.11-(4) and (7) and Div. C, Section 3.4.

See Div. C, Table 3.5.2.2. for Classes of Registration for RCA's and Categories of Qualifications for Persons authorized by the RCA to exercise powers and perform functions on behalf of the Agency.]

According to Subsection 1.-(1) of the BCA, a Registered Code Agency is a person that has the qualifications and meets the requirements described in Subsection 15.11-(4).

While a RCA having jurisdiction, just like a Chief Building Official, may make an Order to Uncover and a Stop Work Order, it is also just like an Inspector, an assistant to the Chief Building Official.

THE FUNCTIONS OF A REGISTERED CODE AGENCY

Section 15.15 informs us that a RCA that is under agreement with a Principal Authority may be appointed to perform the following functions in respect of the construction of a building or class of building specified in the agreement:

- Review designs and other materials to determine whether the proposed construction of a building complies with the Code,
- 2. Issue a Plans Review Certificate,
- 3. Issue Change Certificates,
- 4. Inspect the construction of the building after the building permit has been issued under Section 8 of the BCA,
- 5. Issue Final Certificates
- Perform such other functions as may be authorized under the BCA or in the OBC.

NOTA BENE: For the time being, "such other functions" is limited to the issuance of a Certificate for the Occupancy of a Building not Fully Completed. [Div. C, Sentences 3.7.3.1.(1) and 3.7.4.3.(5)]

The functions of a RCA may be performed:

before a permit is issued under Section 8 of the BCA,

or

after a permit is issued under Section 8 of the BCA,

or

both before and after a permit is issued under Section 8 of the BCA.

[BCA Clauses 4.1-(4)(a), (b) and (c)]

* duty of RCA to have a Quality Management Plan

To register with the Director of the Building and Development Branch or to renew a registration a RCA must have a Quality Management Plan under Sentence 3.4.3.3.(3) of Div. C. There is no such requirement for a Principal Authority. Nonetheless, the Principal Authority must have a system in place to exercise powers and perform its duties under the BCA.

The Quality Management Plan is essentially a set of standard operating procedures outlining how the RCA will carry out its duties under the BCA and the OBC.

A Guide to Preparing a Quality Management Plan for RCAs is available on the Building Code Website at www.ontario.ca/buildingcode. Left click on Publications, scroll down the menu and left click Guides. Scroll down the menu and left click on Guide to Preparing a Quality Management Plan for Registered Code Agencies.

Exercise # 1- QUALITY MANAGEMENT PLAN

To complete this exercise, you will need to consult Div. C, Clauses 3.4.3.3.(3)(a) to (k) and the Guide to Preparing a Quality Management Plan for Registered Code Agencies.

Sentence 3.4.3.3.(3) of Division C informs us that the RCA's application for registration must include a Quality Management Plan. The Quality Management Plan must include, as a minimum, the topics of Div. C, Clauses 3.4.3.3.(3)(a) to (k).

1.	The requirement of each Clause has been reproduced. In the space provided write any question, note, comment or concern to be discussed in class.
(a	procedures relating to the commencement of activities as a RCA including procedures to verify the qualifications of those persons who will carry out the activities of the RCA and to verify that they have no conflict of interest within the meaning of Sentence 3.7.3.1.(4) of Division C,
(b) identification of the responsibilities of persons who will carry out plans review and inspection activities and procedures for the supervision of those persons,
(c) procedures for assessing plans and specifications for conformity with the Code, including procedures for the assessment of alternative solutions,
(d) procedures for inspecting the construction of buildings,

(e)	for inspection and receipt of notices that construction is ready for inspection and receipt of written general review reports of Architects and Professional Engineers arising from Subsection 1.2.2. of Division C.
(f)	procedures for the issuance of certificates and orders under the BCA, including the responsibility of the persons with the qualifications set out in Sentences 3.7.5.3.(1) and (2) of Division C.
(g)	procedures for referral of matters of Stop Work Orders to the Chief Building Official, under Subsection 14(5) of the BCA. See Div. C, Subsection 3.7.7.
(h)	procedures for the participation of the RCA in proceedings before the Building Code Commission under Section 24 of the BCA and before the Ontario Superior Court of Justice under Section 25 of the BCA,

inc	cocedures for documenting the activities of the RCA, cluding data control, records retention and the aintenance of security and confidentiality of records and insferring records to the Principal Authority,
(j) pro	cedures for training and supervision of personnel,
	ocedures for the review and up-dating of the Quality anagement Plan.
NOTA BENE:	As stated in Module Four, the Divisional Court did not consider the qualification requirements of the BCA and OBC relating to registered code agencies.
	The Ministry is working with stakeholders including architects, building officials and engineers to monitor the implications of the decision of the Divisional Court on the administration and enforcement of the <i>Building Code Act</i> , 1992 and the building code.

CIRCUMSTANCES WHEN THE RCA MAY NOT BE APPOINTED OR CONTINUE TO ACT UNDER AN APPOINTMENT

Subsection 4.1-(5) of the BCA is quite clear, a RCA is not to accept an appointment in the circumstances set out in the building code or if it would have a conflict of interest as determined in accordance with the OBC.

Clauses 3.7.2.1.(1)(a) and (b) of Division C inform us that a RCA may not be appointed to perform functions under Section 15.15 of the BCA in respect of a building or continue to act under an appointment in respect of a building **if**

✓ the RCA is not registered under Section 3.4. of Division C
in respect of the class of registration to which the
construction of the building relates,

or

✓ the RCA is in breach of a condition of its registration under Article 3.4.3.7. of Division C.

Div. C, Sentence 3.7.2.1.(3) provides that an RCA must not be appointed or continue to be appointed if it would be in a conflict of interest.

EXERCISE #2 - CONFLICT OF INTEREST SITUATIONS FOR A RCA

In this exercise, we will look at the OBC conflict of interest provisions that would prevent the appointment or continued appointment of a Registered Code Agency. To complete this exercise, you will need to consult Sentences 3.7.2.1.(4) and (5) of Division C.

1. In your own words, complete the following statement.

A RCA would be in a conflict of interest and could not be appointed nor continue to be appointed **if** the RCA, an officer, director, partner or employee of the RCA or any person engaged by the RCA to perform functions for it:

Facilitator Self-Study
Participant Note: Clause
3.7.2.1.(4)(b)) does not only
talk about a person who
has reviewed and taken
responsibility for the design
activities but also any
person who carried out
design activities or
construction relating to any
part of the building.

(b)

(c) ____

(1)

or (ii) _____

or (iii) _____

(d) _____

OBC references:

Facilitator Self-Study
Participant Note: Clause
3.7.2.1.(4)(d) effectively
prevents an employee of a
principal authority from
becoming a RCA or
working for a RCA even
one who works exclusively
outside their place of
emploses.

STOP

_	purposes of Clause 3.7.2.1.(4)(c) of Div. C.
_	
_	
_	
_	

To obtain a copy of the Registered Code Agency Registration Application form, consult the Building Code Website at http://www.ontario.ca/buildingcode and left click on "Qualification and Registration", scroll down the menu and left click on "Registered Code Agency". Scroll down the menu and left click on Registered Code Agency Registration Application.

To obtain access to the Public Register on Qualifications of Registered Code Agencies consult this manual at Module 4 Exercise # 8.

EXERCISE # 3- CONDITIONS FOR REGISTRATION OF A REGISTERED CODE AGENCY

 In your own words summarize the conditions of Div. C, Article 3.4.3.7. that would allow a person to become a Registered Code Agency. The terms RCA and registered person are synonymous.

(i)		
and (ii)		
(i)		
and (ii)		
(i)	 	
and (ii)		

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(f)	
-	
(g)	
(h)	



THE AGREEMENT BETWEEN THE PRINCIPAL AUTHORITY AND THE REGISTERED CODE AGENCY

You will recall from Module Two that Principal Authorities are empowered to enter into agreements with RCA's authorizing the Agency to perform specified functions in respect of the construction of a building or class of building as specified in the agreement.

Exercise # 4- THE AGREEMENT BETWEEN THE PRINCIPAL AUTHORITY AND THE RCA

To complete this exercise, you will need to consult Div. C, Articles 3.7.1.1, and 3.7.1.2. The requirement of each Clause has been reproduced. In the space provided write any question, note, comment or concern to be discussed in class.

Div. C, Sentence 3.7.1.1.(1) informs us that the agree between the Principal Authority and the RCA under Subse 4.1-(1) of the BCA must be in writing and must:		
a)	specify the functions identified in Section 15.15 of the BCA that the RCA is authorized to perform,	
b)	specify the construction of the building or class of buildings in respect of which the functions described in a) will be performed,	
c)	set out the procedure by which the Principal Authority wil appoint the RCA to perform the functions described in a) in respect of the construction of a building or class of buildings described in b).	

_	d)	require that the RCA carry out its functions described in a) in accordance with the BCA, the Code and the Quality Management Plan, described in Clause 3.4.3.2.(1)(d) of Division C, that the Director accepted for Registration,
_	e)	provide that the Principal Authority will supply to the RCA such plans, specifications and other information including copies of applications for building permits, that the RCA may require in order to act under the appointment,
2.	ag	v. C, Sentence 3.7.1.1.(2) goes on to say that the written reement: may contain additional provisions that are not inconsistent with the requirements of Div. C, Clauses 3.7.1.1.(1)(a) to (e),
	b)	must contain any provision that relates to the construction of buildings for a Class of Registration for which the RCA is not registered under Section 3.4. of Division C.
_		

3.	Div. C, Sentence 3.7.1.2.(1) informs us that the appointment of a RCA under Subsection 4.1-(2) of the BCA by a Principa Authority to perform specified functions in respect of the construction of a building or class of building must be in writing and must:		
	a)	specify the construction of the building or class of buildings described in the agreement in respect of which the appointment relates,	
_	b)	specify the functions described in Section 15.15 of the BCA that the RCA is appointed to perform,	
_			
	c)	require that the RCA carry out the functions described in b) in accordance with the BCA, OBC and the Quality Management Plan, described in Clause 3.4.3.2.(1)(d) of Division C, that the Director accepted for Registration.	
_			

4.	Div. C, Sentence 3.7.1.2.(2) goes on to say that the written appointment may contain additional provisions that are not inconsistent with the requirements of Clauses 3.7.1.2.(1)(a) to
	(c) of Division C.
_	
_	
_	

STOP

MANNER IN WHICH THE RCA MUST PERFORM ITS FUNCTIONS

According to Subsection 15.16-(1) of the BCA, a RCA may exercise the powers and perform the duties specified in the BCA and the OBC in respect of only the functions and the building specified in an appointment.

A RCA must perform the functions specified in the appointment in accordance with:

 the Building Code Act, the Ontario Building Code and the Quality Management Plan described in Clause 3.4.3.2.(1)(d) of Division C and accepted by the Director for registration,

[Div. C, Sentence 3.7.4.1.(1)

and

 Supplementary Standard SC-1, "Code of Conduct for Registered Code Agencies".

[Div. C, Sentence 3.7.4.1.(2)]

Under Subsection 15.14-(1) of the BCA, the RCA must give to the CBO, the information that is prescribed in the OBC.

The requirements of the RCA to give information to the CBO apply even if the RCA is no longer registered under Section 3.4. of Division C.

[Div. C, Sentence 3.7.6.3.(4)]

Exercise # 5- PLANS REVIEW BY A REGISTERED CODE AGENCY

The requirement of the BCA and the OBC have been paraphrased. In the space provided write any question, note, comment or concern to be discussed in class.

1. duty of RCA to have qualified staff

The RCA must ensure that the Plans Review is carried out by person who has the qualifications set out in Div. C, Clau 3.4.3.2.(1)(b) or (c) in respect of the type of building set out Column 3 of Table 3.5.2.2. of Division C. [BCA Subsections 15.11-(4) and 15.17-(1) and Div. C, Senten 3.7.4.2.(1)]		
authority of RCA to issue a Plans Review Certificate the RCA having jurisdiction is empowered to issue a Plans review Certificate, in the form approved by the Minister and ferenced at Clause 8(2)(d) of the BCA if the RCA is exitisfied on reasonable grounds that, on the date the Plans review Certificate is issued, the proposed construction of the hilding to which the Plans Review Certificate relates is in empliance with the current Code. hiv. C, Clauses 3.7.4.3.(3)(a) to (c) and Sentence 3.7.4.3.(1), h) and (7)]		

 b) Consult the Plans Review Certificate referenced in Div. C, Sentence 3.7.4.3.(7) and on the Certificate, write any question, note, comment or concern to be discussed in class. c) The Plans Review Certificate must be signed by a person who has the qualifications set out in Div. C, Clause 3.4.3.2.(1)(a) and when the building is subject to the *Professional Engineers Act*, R.S.O. 1990, c. P 28, or the *Architects Act*, R.S.O. 1990, c. A26, the person who signs the Plans Review Certificate, in addition to having the qualifications set out in said Clause 3.4.3.2.(1)(a) must also be an Architect or Professional Engineer, as the case may be.

[Div. C, Sentence 3.7.4.3.(2)]

3. duty of RCA to maintain records of plans review

a)	The RCA must maintain records of all plans review activities and Plans Review Certificates issued in accordance with the Quality Management Plan described in Clause 3.4.3.2.(1)(d) or Division C and accepted by the Director for registration. [Div. C, Sentence 3.7.4.7.(1)]			
_				



Exercise # 6- INSPECTIONS BY A REGISTERED CODE AGENCY

The requirement of the BCA and the OBC have been paraphrased. In the space provided write any question, note, comment or concern to be discussed in class.

1. duty of RCA to have qualified staff

The RCA must ensure that the inspections are carried out by a person who has the qualifications set out in Clause 3.4.3.2.(1)(b) or (c) in respect of the type of building set out in Column 3 of Table 3.5.2.2. of Division C.

[BCA Subsections 15.11-(4) and 15.17-(1) and Div. C, Sentence 3.7.4.2.(1)]

a)	The RCA shall prepare a written record of every inspection [Div. C, Sentence 3.7.4.2.(3)
b)	The written record of inspection must include:
	 i) the date of receipt of the notice of readiness for inspection if any, and ii) the date of the inspection,
	and iii) the reason for the inspection, and iv) details of any non-compliance with the OBC that was
	observed. [Div. C, Clauses 3.7.4.2.(4)(a) to (d)]
c)	The RCA must maintain records of all inspection activities in accordance with the Quality Management Plan described in Clause 3.4.3.2.(1)(d) of Division C and accepted by the Director for registration. [Div. C, Sentence 3.7.4.7.(1)]

2. duty of RCA to prepare written record of inspection

3. duty of RCA to give record of inspection to CBO

a)	records of inspection. [Div. C, Clause 3.7.6.3.(2)(b)
b)	It is the duty of the RCA to give to the CBO, any record of information, copies of documents or things, tests, samples or photographs produced, removed, required, taken or ordered to be taken under Subsection 18(1) of the BCA. [Div. C, Clause 3.7.6.3.(2)(e)]

STOP

AUTHORITY OF RCA TO MAKE ORDERS

An appointed Registered Code Agency or an employee, with the qualifications set out in Clause 3.4.3.2.(1)(a) of Division C, identified in the Quality Management Plan described in Clause 3.4.3.2.(1)(d) of Division C and accepted by the Director for registration is empowered to make:

 an Order to Uncover (OTU) under Subsection 13.-(6) of the BCA,

and

 a Stop Work Order (SWO) under Subsection 14.-(1) of the BCA.

[Div. C, Sentence 3.7.4.4.(1)]

By way of Subsection 15.17-(3) of the BCA, a person, with the qualifications set out in Clause 3.4.3.2.(1)(b) or (c) of Division C, authorized in writing by the RCA and identified in the Quality Management Plan described in Clause 3.4.3.2.(1)(d) of Division C and accepted by the Director for registration is empowered to make:

 an Order to Comply (OTC) under Subsection 12.-(2) of the BCA.

and

 an Order Not to Cover or Enclose (ONTCOE) under Subsection 13.-(1) of the BCA,

and

 an Order Requiring Tests and Samples (ORTAS) under Clause 18.-(1)(f) of the BCA.

Exercise # 7- ORDERS MADE BY A REGISTERED CODE AGENCY

According to Subsection 15.18-(1) of the BCA, when a RCA makes an Order, the RCA is required to give to the CBO a copy of the Order within the period prescribed in the OBC.

The requirement of the OBC have been paraphrased. In the space provided write any question, note, comment or concern to be discussed in class.

- When a RCA issues an OTC, ONTCOE or an OTU, the RCA must prepare a written record consisting of:
 - a) a copy of the Order,

and

b) the names of the persons on whom the Order was served and the date and manner of service,

and

- c) when and how the Order was complied with,
 and
- d) if the Order has not been complied with, the efforts made by the RCA to achieve compliance by the persons responsible for compliance.

[Div. C, Clauses 3.7.4.2.(5)(a) to (d)]

to the CBO as soon as practicable. [BCA Subsection 14(5)] a) The referral must be made in the manner prescribed in OBC. [BCA Subsection 14(6)] b) As soon as possible, the RCA must give to the CBC report that contains the following information: i) a copy of the SWO and a copy of the OTC, ONTCOR OTU that was not complied with, and ii) the names of the persons on whom the Orders were ser along with the date and manner of service, and iii) a statement that the Orders have not been comp with, and iv) such other information as the CBO may request for the RCA of the matter that has been referred. [Div. C, Clauses 3.7.7.1.(1)(a) and (b)]		
OBC. [BCA Subsection 14(6)] b) As soon as possible, the RCA must give to the CBC report that contains the following information: i) a copy of the SWO and a copy of the OTC, ONTCOR OTU that was not complied with, and ii) the names of the persons on whom the Orders were ser along with the date and manner of service, and iii) a statement that the Orders have not been comp with, and iv) such other information as the CBO may request for the RCA of the matter that has been referred. [Div. C, Clauses 3.7.7.1.(1)(a) and (b)] c) The above report must, in accordance with the Quantum Management Plan described in Clause 3.4.3.2.(1)(d) Division C and accepted by the Director for registration signed by a person who has successfully completed Legal/Process Examination on the powers and duties RCA.	2.	
report that contains the following information: i) a copy of the SWO and a copy of the OTC, ONTCOR OTU that was not complied with, and ii) the names of the persons on whom the Orders were ser along with the date and manner of service, and iii) a statement that the Orders have not been comp with, and iv) such other information as the CBO may request for the RCA of the matter that has been referred. [Div. C, Clauses 3.7.7.1.(1)(a) and (b)] c) The above report must, in accordance with the Qual Management Plan described in Clause 3.4.3.2.(1)(d Division C and accepted by the Director for registration signed by a person who has successfully completed Legal/Process Examination on the powers and duties RCA.		
oTU that was not complied with, and ii) the names of the persons on whom the Orders were ser along with the date and manner of service, and iii) a statement that the Orders have not been comp with, and iv) such other information as the CBO may request for the RCA of the matter that has been referred. [Div. C, Clauses 3.7.7.1.(1)(a) and (b)] c) The above report must, in accordance with the Quality Management Plan described in Clause 3.4.3.2.(1)(d) Division C and accepted by the Director for registration signed by a person who has successfully completed Legal/Process Examination on the powers and duties RCA.		b) As soon as possible, the RCA must give to the CBO, a report that contains the following information:
ii) the names of the persons on whom the Orders were ser along with the date and manner of service, and iii) a statement that the Orders have not been comp with, and iv) such other information as the CBO may request for the RCA of the matter that has been referred. [Div. C, Clauses 3.7.7.1.(1)(a) and (b)] c) The above report must, in accordance with the Quantum Management Plan described in Clause 3.4.3.2.(1)(d) Division C and accepted by the Director for registration signed by a person who has successfully completed Legal/Process Examination on the powers and duties RCA.		the contract of the contract o
iii) a statement that the Orders have not been compositely with, and iv) such other information as the CBO may request for the RCA of the matter that has been referred. [Div. C, Clauses 3.7.7.1.(1)(a) and (b)] c) The above report must, in accordance with the Quadanagement Plan described in Clause 3.4.3.2.(1)(d) Division C and accepted by the Director for registration signed by a person who has successfully completed Legal/Process Examination on the powers and duties RCA.		ii) the names of the persons on whom the Orders were served along with the date and manner of service,
c) The above report must, in accordance with the Qualification C and accepted by the Director for registration signed by a person who has successfully completed Legal/Process Examination on the powers and duties RCA.		iii) a statement that the Orders have not been complied with,
Management Plan described in Clause 3.4.3.2.(1)(d Division C and accepted by the Director for registration signed by a person who has successfully completed Legal/Process Examination on the powers and duties RCA.		 such other information as the CBO may request from the RCA of the matter that has been referred.
Management Plan described in Clause 3.4.3.2.(1)(d Division C and accepted by the Director for registration signed by a person who has successfully completed Legal/Process Examination on the powers and duties RCA.	_	



Exercise # 8- ISSUANCE OF CERTIFICATES BY A REGISTERED CODE AGENCY

You will recall that when the project falls under the *Professional Engineers Act*, R.S.O. 1990, c. P.28 or the *Architects Act*, R.S.O. 1990, c. A.26, the certificates of the RCA must be signed by an Architect, Professional Engineer or both, as the case may be, who also have the qualifications set out in Clause 3.4.3.2.(1)(a) of Division C and in accordance with the Quality Management Plan described in Clause 3.4.3.2.(1)(d) and accepted by the Director for registration. According to Subsection 15.18-(2) of the BCA, a RCA is required to issue such Certificates and use such forms as required by the OBC. For purposes of Subsection 15.18-(3) of the BCA, the four Certificates that are prescribed in Div. C, Article 3.7.4.3. and that a RCA is empowered to issue are the:

- Plans Review Certificate.
- Change Certificate
- Certificate for the Occupancy of a Building not Fully Completed, and
- Final Certificate.

The requirement of the OBC have been paraphrased. In the space provided write any question, note, comment or concern to be discussed in class.

1. Authority of RCA to issue Plans Review Certificates

a) A duly appointed RCA may, in accordance with the Quality Management Plan described in Clause 3.4.3.2.(1)(d) of Division C and accepted by the Director for registration, issue a Plans Review Certificate, if the RCA is satisfied on reasonable grounds that on the date the Plans Review Certificate is issued, the proposed construction of the said building is in compliance with the current Code.
[Div. C, Sentence 3.7.4.3.(3)]

[DIV. C, Semence 3.7.4.3.(3)]

=	b)	Consult the Plans Review Certificate prescribed in Sentence 3.7.4.3.(7) of Division C and in the space provided note any comment, question or concern. During the course, the facilitator will respond to any comment, question or concern you may have.
2.	Au	Ithority of RCA to issue Change Certificates
_		A duly appointed RCA may, in accordance with the Quality Management Plan described in Clause 3.4.3.2.(1)(d) of Division C and accepted by the Director for registration, issue a Change Certificate, if the RCA is satisfied on reasonable grounds that on the date the Change Certificate is issued, the proposed construction of the said building to which the Change Certificate relates is in compliance with the current Code. Div. C, Sentence 3.7.4.3.(4)]
=		
	b)	Consult the Change Certificate prescribed in Sentence 3.7.4.3.(7) of Division C and in the space provided note any comment, question or concern. During the course, the facilitator will respond to any comment, question or concern you may have.
_		

	Authority of RCA to issue Certificates for the Occupancy	,
	of Buildings not Fully Completed	

a) A duly appointed RCA may, in accordance with the Quality Management Plan described in Clause 3.4.3.2.(1)(d) of Division C and accepted by the Director for registration, issue a Certificate for the Occupancy of a Building not Fully Completed, if the RCA is satisfied on reasonable grounds that on the date the Certificate for the Occupancy of a Building not Fully Completed is issued, the construction of the said building is in compliance with Clauses 1.3.3.1.(2)(a) to (q) of Division C.

[Div. C, Sentence 3.7.4.3.(5)]

b)	Consult the Certificate for the Occupancy of a Building not Fully Completed prescribed in Sentence 3.7.4.3.(7) of Division C and in the space provided note any comment, question or concern. During the course, the facilitator will
	respond to any comment, question or concern you may have.

4. Authority of RCA to issue Final Certificates

	A duly appointed RCA may, in accordance with the Quality Management Plan described in Clause 3.4.3.2.(1)(d) of Division C and accepted by the Director for registration issue a Final Certificate, if the RCA is satisfied on reasonable grounds that on the date the Final Certificate is issued, the construction of the said building is in compliance with the current Code. Div. C, Sentence 3.7.4.3.(6)]
b)	Consult the Final Certificate prescribed in Sentence 3.7.4.3.(7) of Division C and in the space provided note any comment, question or concern. During the course, the facilitator will respond to any comment, question or concern you may have.

Exercise # 9- TRANSFER OF RECORDS FROM THE RCA TO THE CBO AND DISCLOSURE

The RCA is required to maintain records of all plans review and inspection activity, of all Certificates and Orders and of any other activities taken in carrying out functions under an appointment in accordance with the Quality Management Plan described in Clause 3.4.3.2.(1)(d) of Division C and accepted by the Director for registration.

[Div. C, Sentence 3.7.4.7.(1)]

STOP

The requirement of the OBC have been paraphrased. In the space provided write any question, note, comment or concern to be discussed in class.

- A RCA must give copies of the following records to the CBO all:
 - OTC, ONTCOE and OTU.

and

written records of inspection,

and

final certificates.

and

- records allowing the use of an alternative solution,
 and
- records of information, copies of documents, things, tests, samples or photographs produced, remover or required, taken or ordered under Clause 18.-(1)(f) of the BCA.

[Div. C, Clauses 3.7.6.3.(2)(a) to (e)]

- The records described in 1. above must be given to the CBO within whichever time ends earlier from:
 - a) the time specified in the agreement under Article 3.7.1.1. of Division C,

or

b) the time specified in the appointment under Article 3.7.1.2.
 of Division C,

or

 within 15 days after the expiry or termination of the appointment of the RCA if there no time specified in the agreement or the appointment,

or

 d) within two days after the notice of request by the CBO is received.

[Div. C, Clauses 3.7.6.3.(3)(a) to (c)]

	CA Subsection 15.16-(2)
b)	All information collected by a RCA in the exercis powers and the performance of duties under the BCA only be used to perform functions under an appoint and may be disclosed only:
ar	to the Principal Authority who made the appointment, and to a Principal Authority to aid the enforcement in manner of the BCA,
	where required or permitted under: i) the BCA,
	or ii) the OBC, or
	iii) other applicable legislation,oriv) an Order of a Court.[Div. C, Clauses 3.7.4.7.(2)(a), (b) and (c)]
	[2.1. 6, 6.4.666 6

DWERS AND DUTIES OF THE RCA	page 28
c) The RCA must ensure that any agreen hires and authorizes in writing to experform functions under an appointme include a provision that requires the pethe confidentiality requirements of Sea and (2) of Division C. [Div. C, Sentence 3.7.4.7.(3)]	ercise powers and ent under the BCA rson to comply with
STOP	
EXERCISE #10 - DUTY OF RCA TO HAV	E INSURANCE
In the space provided, not any comment, concerning the course, the facilitator will respond question or concern you may have.	
Every RCA shall have the insurance covera	age specified in the

[BCA Subsection 15.13-(1)

- 2. Clause 3.6.2.3.(1)(a) of Division C requires a RCA to have liability insurance for an extended reporting period after the RCA ceases to be registered. Consequently, with respect to an event that gives rise to a claim, a person may give notice within:
 - (i) one year after the RCA ceases to be insured
 - two years after the RCA ceases to be insured (ii)
 - (iii) three years after the RCA ceases to be insured
 - (iv) four years after the RCA ceases to be insured

OBC Reference: _

- 3. Clause 3.6.2.3.(1)(a) of Division C requires a RCA to have liability insurance for claims that are first made and reported to the insurer during the period of insurance or during the extended reporting period after the RCA ceases to be insured. The limit of indemnity during any one period of insurance is not less than:
 - (i) \$250,000 per claim and \$500,000 in the aggregate
 - (ii) \$500,000 per claim and \$1,000,000 in the aggregate
 - (iii) \$1,000,000 per claim and \$2,000,000 in the aggregate
 - (iv) \$2,000,000 per claim and \$4,000,000 in the aggregate

OBC Reference:



EXERCISE #11 DUTIES THAT ARE UNIQUE TO THE RCA HAVING JURISDICTION

In the space provided, not any comment, concern or question. During the course, the facilitator will respond to any comment, question or concern you may have.

1. duty of RCA to inform CBO of incapacity to perform

possible give notice to the [BCA Ss. 15.14(1) Div.	

2.	duty of RCA to give the information prescribed in the OBC
	to the BDB Director

po	nctions for which the RCA has been appointed shall as soon as ssible give notice to the Director of the situation. CA Subsection 15.14-(2) Div. C, Sentence 3.7.6.2.(1)
3.	authority of RCA to authorize persons to act on its behalf in accordance with the BCA and the OBC
	 a) A RCA may authorize, in writing, one or more persons to exercise powers and perform its functions under the BCA, subject to such conditions as may be prescribed in the OBC. [BCA Ss. 15.17(1)]
_	b) Persons who possess the qualifications described in Clauses 3.4.3.2.(1)(a), (b) and (c) of Division C are prescribed for the purposes of Subsection 15.17-(1) of the BCA.
4.	duty of RCA to issue Certificates of Authorization
	 a) The RCA shall issue a Certificate of Authorization containing the information prescribed in the OBC to the authorized persons. [BCA Subsection 15.17-(2)]

	The persons authorized by a RCA to exercise powers and perform functions on its behalf must carry their Certificate of Authorization when performing their duties and shall produce them for inspection upon request. CA Section 15.23 and Div. C, Sentence 3.7.4.5.(3)]
c)	The Certificate of Authorization in accordance with the Quality Management Plan described in Clause 3.4.3.2.(1)(d) of Division C and accepted by the Director for registration must be signed by a person who has the qualifications described in Clause 3.4.3.2.(1)(a) of Division C and must contain the following information:
ii) iii) iv) v)	a representative of the RCA who may be contacted about the Certificate of Authorization and the powers to be exercised and the functions to be performed by the bearer of the Certificate of Authorization,

- duty of RCA to perform functions in accordance with the BCA and the OBC
 - a) A RCA must perform the functions specified in the appointment subject to the restrictions set out in the BCA and in the manner and subject to the restrictions set out in the OBC.

[BCA Subsection 4.1-(6)]

- b) A RCA <u>shall not</u> dismiss, suspend, demote, discipline, harass or otherwise disadvantage an employee, or deny an employee a benefit of employment, by reason that the employee, acting in good faith and on the basis of reasonable belief:
- informed the Director of contraventions against the BCA and OBC by the RCA or any other person,
- (ii) refused or stated an intention to refuse to act contrary to the BCA and the OBC,
- (iii) did or stated an intention to do anything in order that a provision of the BCA or the OBC is not contravened [OBC Clauses 3.7.4.6.(1)(a), (b) and (c)]

STOP

ANSWERS MODULE FOR PARTICIPANT VERSION OF GENERAL LEGAL/PROCESS COURSE

MODULE ONE - INTRODUCTION AND INSTRUCTIONS

Exercise # 4

- 1. The authority of an Inspector to make an Order to Comply under Subsection 12.-(2) of the BCA is;
 - c) permissive, may be done, in obtaining compliance with the OBC
- According to Section 7.1 of the BCA, the duty of a Principal Authority to establish and enforce a Code of Conduct is:
 - a) imperative, must be done
- According to the BCA, the authority and duty of the council of a municipality to appoint such inspectors
 as are necessary, in addition to a Chief Building Official, for the enforcement of the BCA is found in
 Subsection:
 - a) 3.-(2)

BCA Reference for the definition of Inspector and municipality: Subsection 1.-(1)

- 4. The term smoke alarm is defined in:
 - b) Div. A, Clause 1.4.1.2.(1)(b) of the OBC for purposes of the Code
- 5. In the OBC, the abbreviation "g" means;
 - a) gram or grams

OBC References: Div. A, Sentence 1.4.2.1.(1) and Table 1.4.2.1.

- The construction of a building of residential occupancy that has three storeys in building height and a building area of 600 m² would in the first instance be regulated by Div. B;
 - a) Part 9 of the OBC

OBC References: Div. A, Clauses 1.1.2.4.(1)(a) and (b) and Subclause 1.1.2.4.(1)(c)(i)

- The construction of a building of residential occupancy that is one storey in building height with a building area of 610 m² would in the first instance be regulated by Div. B;
 - b) Part 3 of the OBC

OBC Reference: Div. A, Subclause 1.1.2.2.(1)(b)(i)

- The construction of a self-service storage building, (a special Group F Division 2 occupancy), of one storey in building height with a building area of 300 m² is regulated by Div. B;
 - d) Section 3.10. of the OBC and the applicable requirements of Part 9

OBC References: Div. A, Clauses 1.1.2.4.(1)(a) and (b) and Subclause 1.1.2.4.(1)(c)(iv) — Div. B, Part 9. Sentence 9.1.1.3.(1) — Section 3.10. and then Sentence 3.10.1.1.(1) and Clause 3.10.2.1.(1)(a) send you back to the applicable requirements of Part 9 for a Group F Division 2 building

- The area of windows (a health requirement) for dwelling units in a 10 storey Group C residential building is calculated from the values found in Division B,
 - b) Table 9.7.1.2. by way of Sentence 3.7.2.1.(1)

OBC References: Div. A, Subclause 1.1.2.2.(1)(b)(i) — Div. B, Part 3 — Sentence 3.7.2.1.(1) — Table 9.7.1.2. and Sentence 9.7.1.2.(1)

- As a general rule, the requirements of Div. B, Section 9.5. "Design of Areas and Spaces" apply to a Part 9;
 - dwelling unit that is intended for use on a continuing or year round basis as a principal residence

OBC Reference: Div. B, Sentence 9.5.1.1.(1)

- 11. According to the Legislation Act, the By-law enacted by the council of a municipality to appoint a Chief Building Official*;
 - b) may not restrict the powers and duties of the CBO under the BCA

Legislation Act reference: Section 78.

- 12. According to Subsection 3.-(2) of the BCA and Section 79 of the Legislation Act, 2006 a Principal Authority must always have a CBO to act as the occasion requires. According to the Legislation Act when the Chief Building Official is absent or becomes unable to act, the Principal Authority:
 - must appoint a DCBO or appoint another person who will temporarily act as CBO during his or her absence

Legislation Act references: Clauses 77(b) and (c)

- 13. Subsection 1.-(1.3) and Section 6.1 of the BCA inform us that an Inspector who has the same powers and duties as the CBO in relation to plumbing:
 - a) does not have the authority to issue a conditional permit

BCA References: Clause 1.-(1.3)(b) and Subsection 6.1-(5)

- 14. Subsection 1.-(1.3) and Section 6.2 of the BCA inform us that an Inspector who has the same powers and duties as the CBO in relation to sewage systems;
 - b) has the authority to issue a conditional permit

BCA References: Clause 1.-(1.3)(a) and Subsection 6.2-(4)

see who can enter into a Conditional Permit Agreement under Clause 8.-(3)(c) of the BCA

- 15. Subject to confirmation by the plans review activity, the method of calculating the building area of a self-service storage building, for purposes of Article 3.10.4.2. is to be decided by;
 - a) the qualified designer who will review and take responsibility for design activities
- According to the Legislation Act, 2006 the By-law enacted by the council of municipality to appoint a Deputy Chief Building Official (DCBO);
 - a) may restrict the powers and authority that the DCBO would otherwise have under the BCA Legislation Act Reference: Clause 77(b)
- 17. Consult Div. A, Sentence 1.4.1.1.(1) of the OBC, it provides direction for dealing with non-defined terms. In your own words, express the meaning of the sentence.

When a word phrase or term used in the OBC is not provided with a definition it shall have a meaning that is commonly assigned to it in the context in which it is used, taking into account the specialized use of terms by the various trades and professions to which the terminology applies

MODULE TWO - COUNCIL AND THE ENFORCEMENT OF THE BCA

Exercise # 1

- 1. According to the BCA, principal authority means:
- a) the Crown.

OR

b) the council of a municipality.

OR

- an upper-tier municipality that has entered into an agreement with one or more of its lower-tier municipalities under Subsection:
 - 3.-(5) of the BCA, for the enforcement of the OBC.
 - 6.1-(1) of the BCA, for the enforcement of plumbing, or
 - 6.2-(1) of the BCA, for the enforcement of sewage systems.

d) a board of health (health unit) which;

is prescribed in Division C, Column 1 of Table 1.7.1.1., for the purposes of Subsection 3.1-(1) of the BCA, to enforce the provisions of the BCA and OBC related to sewage systems in the municipalities and territory without municipal organization of Northern Ontario shown in Column 2 of said Table 1.7.1.1.,

OF

has entered into an agreement with an upper-tier municipality under the authority of Subsection 6.1-(2) of the BCA to enforce plumbing within the lower-tier municipalities that have an agreement with the upper-tier municipality under Subsection 6.1-(1) of the BCA,

10

has under the authority of Subsection 6.1-(3) of the BCA, entered into an agreement with a lowertier municipality to enforce plumbing when the lower-tier municipality is not part of an agreement with the upper-tier municipality under subsection 6.1-(1) of the BCA,

or

has under the authority of Subsection 6.2-(2) of the BCA, entered into an agreement with a lowertier municipality to enforce sewage systems, when the lower-tier municipality is not part of an agreement with the upper-tier municipality under Subsection 6.2-(1) of the BCA.

OR

e) a planning board which could:

be prescribed for the purposes of Subsection 3.1-(1) of the BCA, to enforce the provisions of the BCA and OBC related to sewage systems in Northern Ontario.

OR

f) a conservation authority which;

is prescribed in Division C, Column 1 of Table 1.7.1.1., for the purposes of Subsection 3.1-(1) of the BCA, to enforce the provisions of the BCA and OBC related to sewage systems in the municipalities and territory without municipal organization of Northern Ontario shown in Column 2 of said Table 1.7.1.1. of the OBC,

OF

has under the authority of Subsection 6.2-(2) of the BCA, entered into an agreement with a municipality to enforce sewage systems, when the municipality is not part of an agreement with the upper-tier municipality under Subsection 6.2-(1) of the BCA.

Consider Subsection 1.-(1) of the BCA and name the six entities which may be a principal authority for purposes of the Building Code Act.

The Crown, the council of a municipality, an upper-tier municipality, a board of health, a planning board and a conservation authority may be a principal authority for purposes of the Building Code Act.

Exercise # 2

Complete the following Table by inserting the BCA references that authorize the establishment of the
enforcement model described in each Row of Column 2, the duty of each principal authority to enact
an instrument called a by-law, resolution or regulation, as the case may be, the duty and authority to
appoint staff and to establish and enforce a Code of Conduct.

	- OBC Enforcement Models - A	uthority	and Duties o	f P. A. under the	BCA -
MODEL	Description of enforcement model and identification of Principal Authority	BCA authority for model	BCA authority and duty of Principal Authority to enact an instrument	BCA authority and duty of Principal Authority to appoint staff	authority and duty of P. A to establish and enforce a Code of Conduct
1	OBC enforced by municipality	3(1)	7	* 3(2)	7.1-(1)
2	OBC enforced under agreement between two or more municipalities	3(3)	7	* 3(3)(c)	7.1-(1)
3	OBC enforced by upper-tier municipality under agreement with one or more of its municipalities	3(5)	7	* 3(6)	7.1-(1)
4	Plumbing enforced by upper-tier municipality under agreement with one or more of its municipalities	6.1-(1)	7	** 6.1-(4) & (5)	7.1-(1)
5	Upper-tier municipality with a model 4 agreement may delegate plumbing enforcement to the board of health	6,1-(2)	6.1-(7) 7	** 6.1-(4) & (5)	7.1-(1)
6	A municipality that is not party to a model 4 agreement may enter into agreement with the board of health to enforce plumbing	6.1-(3)	6.1-(7) 7	** 6.1-(4) & (5)	7.1-(1)
7	Sewage systems enforced by upper- tier municipality under agreement with one or more of its municipalities	6.2-(1)	6.2-(6) 7	*** 6.2-(3) & (4)	7.1-(1)
8	A municipality that is not party to a model 7 agreement may enter into agreement with board of health or conservation authority to enforce sewage systems	6.2-(2)	6.2-(6) 7	*** 6.2-(3) & (4)	7.1-(1)
9	A board of health, planning board or conservation authority that has been prescribed to enforce sewage systems in municipalities of Northern Ontario and the unorganized area shown in Division C, Column 2 of Table 1.7.1.1.	3.1-(1)	7	*** 3.1-(2) & (3)	7.1-(1)
10	OBC enforced by Ontario under agreement with the municipality	4(2)	7	* 4(4) & (5)	7.1-(1)
11	OBC in unorganized territory enforced by adjacent municipality under agreement with the Crown	5(1)	7	* 3(2)	7.1-(1)

Duty to appoint:

* a chief building official and such inspectors as are necessary

^{**} plumbing inspector(s) & designate a senior plumbing inspector with the duties and powers of a CBO

^{***} sewage system inspector(s) and designate one with the duties and powers of a CBO

- When plumbing is being enforced by a Board of Health under agreement with an upper-tier municipality under Subsection 6.1-(2) of the BCA, the CBO and the Inspectors appointed by the municipality to enforce the other provisions of the OBC have;
 - d) no authority to enforce plumbing

BCA Reference: Subsection 6.1-(6)

- 3. When the provisions of on-site sewage systems are enforced by a Conservation Authority under agreement with a municipality as authorized in Subsection 6.2-(2) of the BCA, the Chief Building Official and the Inspectors appointed by the municipality to enforce the other provisions of the Ontario Building Code have;
 - d) no authority to deal with the provisions for on-site sewage systems

BCA Reference: Subsection 6.2-(5)

- 4. In the Territorial Districts of Northern Ontario, the provisions of the OBC for on-site sewage systems are enforced by a principal authority prescribed in Division C, Section 1.7. Consequently the Chief Building Official and the Inspectors appointed by the Council of a Municipality have;
 - d) no authority to enforce the provisions for on-site sewage systems

BCA Reference: Subsection 3.1-(5)

- 5. Consider a municipality that has entered into an agreement with an upper-tier municipality to enforce the BCA and the provisions of the OBC under the authority of Subsection 3,-(5) of the BCA. When that is the case, jurisdiction lies with:
 - b) the upper-tier municipality

BCA reference: Subsection 3.-(6)

Exercise #3

- According to the BCA, the authority to enter into an agreement with a RCA to perform specified functions, either before or after a permit is issued, with respect to the construction of a building or class of buildings lies with the:
 - c) Principal Authority having jurisdiction

BCA Reference: Subsection 4.1-(1)

- The agreement between the RCA and the Principal Authority to perform specified functions in respect of the construction of a building or class of buildings;
 - a) must be in writing

OBC Reference: Div. C, Sentence 3.7.1.1.(1)

- According to the BCA, the Principal Authority or the CBO, as the case may be, may appoint a RCA under agreement, to perform specified functions in respect of the construction of a building or class of buildings;
 - d) either before or after a permit is issued under Section 8 of the BCA

BCA Reference: Clause 4.1-(4)(c)

Exercise # 4

- Consider SC-1 and Div. C, Article 3.7.4.6. An employee of a RCA, acting in good faith and on the basis of reasonable belief;
 - cannot be dismissed if he/she has refused to do anything that is a contravention of the BCA or the OBC

OBC Reference: Div. C, Clause 3.7.4.6.(1)(b)

A RCA under appointment is required to notify the CBO of the location of the following unsafe buildings:

The unsafe building being the building in respect of which the RCA has been appointed to perform functions **and** any surrounding buildings that has been adversely affected by the construction of the building in respect of which the RCA has been appointed to perform functions

OBC References: Div. C, Clauses 3.7.6.3.(7)(a) and (b)

- Consider the Information and Records provisions of SC-1, "Code of Conduct for Registered Code Agencies". A RCA is:
 - a) authorized to disclose records only in accordance with Div. C, Article 3.7.4.7. of the building code

MODULE THREE - UNDERSTANDING ROLES AND THE LEGAL FRAMEWORK OF THE BCA Exercise # 1

- 1. The responsibility for the administration of the BCA lies with the:
 - d) Minister of Municipal Affairs and Housing

BCA References: Subsections 1.-(1) definition of Minister and 2.-(1) Administration

- Except where otherwise provided by the Act, the responsibility for the enforcement of the BCA lies with the:
 - a) Council of the Municipality

BCA References: Subsections 1.-(1) definition of municipality and 3.-(1) Enforcement by Municipalities

Exercise # 2

 Consider the role of a Chief Building Official (CBO) under Subsection 1.1-(6) of the BCA and in the space provided in the following Table, insert the appropriate BCA references.

Role of CBO, I/CBO-P* and I/CBO-SS* is to:	BCA reference	
establish operational policies for enforcement of the BCA/OBC	1.1-(6)(a)	
co-ordinate and oversee the enforcement of the BCA/OBC	1.1-(6)(b)	
exercise powers and perform duties assigned to him/her under the BCA/OBC	1.1-(6)(c)	
exercise powers and perform duties in accordance with the standards established by the applicable Code of Conduct	1.1-(6)(d)	

* Within the context of Subsection 1-(1.3), the same role applies to an Inspector who has the same powers and duties as the CBO in relation to sewage systems or plumbing, as the case may be.

NOTA BENE: Subsection 1.1-(6) applies to a CBO, I/CBO-P and I/CBO-SS who is an Architect or Professional Engineer.

- A Chief Building Official is a person who is appointed by the Council of a Municipality or Upper-Tier Municipality under the authority of Subsection;
 - a) 3.-(2) or 3.-(6) of the BCA as the case may be

BCA References: Subsections 1.-(1) definition of CBO, 3.-(2) Chief Building Official and 3.-(6) Power of Upper-Tier

- 3. Where there is more than one inspector in the area of jurisdiction, the responsibility to designate the Inspector with the powers and duties of a CBO in relation to sewage systems when an agreement under Subsection 6.2(2) exists, lies with the:
 - d) the board of health or the conservation authority as the case may be

BCA reference: Subsection 6.2-(4)

4. Consider the role of an Inspector under Subsection 1.1-(7) of the BCA and that of a Registered Code Agency under Subsection 1.1-(5) and in the space provided in the Table, insert the appropriate BCA references. You are asked to consult the building code references that have been provided and insert the appropriate cross-references in your copy of the BCA and OBC. In the case of a Registered Code Agency its role and functions are synonymous.

Role of RCA and Inspector* is to exercise powers and perform duties under the BCA and the OBC in connection with:	BCA reference for RCA	BCA reference for Inspector
reviewing plans	1.1-(5)(a)	1.1-(7)(a)
issuing certificates	1.1-(5)(a)	(1)
inspecting construction	1.1-(5)(a)	1.1-(7)(a)
other functions in accordance with the BCA [see Paragraph 6. of Subsection 15.15-(1)] and the OBC [see Div. C, Sentences 3.7.3.1.(1) and 3.7.4.3.(5)]	1.1-(5)(a)	(1)
making orders [see BCA Subsections 13(6), 14(1) and 15.17-(3)	not specified at Subsection 1.1-(5)	1.1-(7)(a)
and to exercise powers and perform duties		
in respect of only those matters for which he/she/it is qualified under the BCA and the OBC	1.1-(5)(b)	1.1-(7)(b)
in accordance with the standards established by the applicable Code of Conduct	see Div. C 3.7.4.1.(2)	1.1-(7)(c)

^{*} This role applies to all types of Inspectors.

NOTA BENE: Subsections 1.1-(5) and (7) apply to an Inspector and RCA who is an Architect or Professional Engineer.

5. An Inspector is a person who is appointed by a Principal Authority under the authority of Subsection; d) 3.-(2), 3.1-(2), 6.1-(4) or 6.2-(3) of the BCA as the case may be

BCA Reference: Subsection 1.-(1) definition of Inspector

According to the BCA, a Registered Code Agency is a person that has the qualifications and meets the requirements described in Subsection;

d) 15.11-(4) of the BCA

BCA Reference: Subsection 1.-(1) definition of RCA

⁽¹⁾ The provisions of Column 1 do not apply to Inspectors.

 Consider the role of a Designer under Subsection 1.1-(2) of the BCA and in the space provided in the Table, insert the appropriate BCA references.

When designs[see BCA Subsection 15.11-(6)] are to be submitted in support of a permit under the BCA, it is the Role of Designer to :	BCA reference
provide designs which are in accordance with the BCA and the OBC	1.1-(2)(a)
provide documentation that is sufficiently detailed to permit the design to be assessed for compliance with the BCA and the OBC	1.1-(2)(a)
provide documentation that is sufficiently detailed to allow the builder to carry out the work in accordance with the design, the BCA and the OBC	1.1-(2)(a)
perform the role described in Clause 1.1-(2)(a) in respect of only those matters for which the designer has the qualifications, if any required by the BCA and the OBC	1.1-(2)(b)
If the OBC [Div. C, Subsection 1.2.2.] requires a general review of the design or construction the designer shall only perform the general review for those matters for which he/she has the qualifications, if any, required by the BCA and the OBC	1.1-(2)(c)

NOTA BENE: Subsection 1.1-(2) does not apply to a designer who is an Architect or Professional Engineer. See Divisional Court Disposition paragraphs [77] and [79].

For purposes of the qualifications of a designer under the BCA, a design includes:

 a plan, specification, sketch, drawing or graphic representation respecting the construction of a building

BCA Reference: Subsection 15.11-(6)

Consider the roles of persons who cause buildings to be constructed and builders and in Columns 2 and 4 of the Table, insert the appropriate BCA references.

Role of every Person who causes construction* is to:	BCA reference	Role of Builder* is to:	BCA reference
cause the building to be constructed in accordance with the BCA, OBC and the Permit issued under the BCA	1.1-(1)(a)	construct the building in accordance with the permit	1.1-(3)(b)
		use appropriate building techniques to achieve compliance with the BCA and the OBC	1.1-(3)(c)
		notify the designer and an Inspector or RCA, as appropriate, when site conditions affect compliance with the OBC,	1.1-(3)(d)
ensure that construction does not proceed unless any permit required by the BCA has been issued by the CBO	1.1-(1)(b)	ensure that construction does not proceed unless any permit required by the BCA has been issued by the CBO	1.1-(3)(a)
ensure that construction is carried out only by persons with qualifications and insurance, if any (1), required by the BCA and the OBC	1.1-(1)(c)	(2)	

- * BCA 8.-(11) No person shall construct or demolish a building or cause a building to be constructed or demolished except in accordance with the BCA and the OBC.
- (1) As a general rule, the BCA and the OBC do <u>not</u> require the builder to have any qualifications nor insurance.
- (2) As an exception to the general rule, firms engaged in the business of constructing on site, installing, repairing, servicing, cleaning or emptying sewage systems are required to become registered with the Director [Div. C, Clause 3.3.3.1.(1)(a) and have qualified installer supervisors on staff [Div. C, Clause 3.3.3.2.(1)(a)].

NOTA BENE: Clause 1.1-(1)(c) does not apply to a designer who is an Architect or Professional Engineer.

- 10. According to the BCA, it is the role of manufacturers, suppliers and retailers of products that are intended for use in Ontario in the construction of a building for a purpose that is regulated by the BCA and the provisions of the OBC to ensure that;
 - d) the products comply with the standards established under the BCA and the OBC

BCA Reference: Subsection 1.1-(4)

Exercise #3

- 1. Within the building regulatory system of Ontario, the OBC is a;
 - b) regulation

BCA References: Subsection 1.-(1) definition of building code or Subsection 34.-(1) authority to enact a building code

2. For each Part of each Division, write in the title; and, in the space provided, write any comment, question or concern. During the course, the facilitator will respond to any comment, question or concern you may have.

Division A, Compliance, Objectives and Functional Statements

Div. A. Part 1 - Compliance and General

Div. A. Part 2 - Objectives

Div. A. Part 3 - Functional Statements

Division B, Acceptable Solutions

Div. B. Part 1 - General

Div. B. Part 2 - Reserved

Div. B. Part 3 - Fire Protection, Occupant Safety and Accessibility

Div. B. Part 4 - Structural Design

Div. B. Part 5 - Environmental Separation

Div. B. Part 6 - Heating Ventilating and Air Conditioning

Div. B. Part 7 - Plumbing

Div. B. Part 8 - Sewage Systems

Div. B. Part 9 - Housing and Small Buildings

Div. B. Part 10 - Change of Use

Div. B. Part 11 - Renovation

Div. B. Part 12 - Resource Conservation

Division C, Administrative Provisions

Div. C. Part 1 - Administrative Provisions

Div. C. Part 2 - Alternative Solutions, Disputes, Rulings and Interpretations

Div. C. Part 3 - Qualifications

Div. C. Part 4 - Transition, Revocation and Commencement

- 3. For each Division B building code requirement, write in the name of the decimal numbering reference and the title of the requirement. The requirements that are untitled are identified as such,
- Part 3. Fire Protection, Occupant Safety and Accessibility

Section 3.4. Exits

Subsection 3.4.2.

Number and Location of Exits from Floor Areas

Article 3.4.2.1. Minimum Number of Exits

Sentence 3.4.2.1.(2)

requirement is untitled

Clause

3.4.2.1.(2)(b)

requirement is untitled

Subclause 3.4.2.1.(2)(b)(i)

requirement is untitled

- 4. The current edition of the OBC, Ontario Regulation 350/06 came into force on:
 - b) December 31, 2006

OBC Reference: Div. C. Sentence 4.3.1.1.(1)

- When a new OBC regulation comes into force, the rules for revocation, commencement and transition can be found in:
 - b) Div. C, Part 4 of the OBC
- Article 1.3.1.2. of Division A by way of Table 1.3.1.2. of Division B informs us that the CCBFC, National Farm Building Code of Canada 1995 is used for the construction of farm buildings:
 - a) in tandem with the 1997 Code, O. Reg. 403/97 as it read on December 30, 2006

OBC reference: Div. A, Sentence 1.3.1.2.(3)

Exercise # 4

- 1. The authority to enact an Instrument under Section 7 of the BCA lies with;
 - d) the Principal Authority

BCA References: Section 7 and Subsection 1.-(1), definition of Principal Authority

- The instrument enacted by a Conservation Authority, under the authority of Section 7 of the BCA, is referred to as:
 - c) a regulation that is not a regulation within the meaning of the Regulations Act

BCA References: Sections 7 and 35.1

- 3. Municipal by-laws respecting standards for the construction or demolition of buildings:
 - d) are superseded by the BCA and the OBC

BCA Reference: Subsection 35.-(1)

- 4. The authority of the council of a municipality to pass a Building By-law under Section 7 of the BCA;
 - b) does not include the authority to amend the meaning of terms defined in Subsection 1.-(1) of the BCA

Reason for choice of answer: There is no authority under Section 7 of the *Building Code Act*, for a Principal Authority to re-define BCA defined terms.

MODULE FOUR - QUALIFICATIONS AND REGISTRATION UNDER THE BCA AND THE OBC Exercise # 1

- In Div. C, Rows 1, 2, 3, 5, 7, 8, 11 and 12 of Column 4 of Table 3.5.2.1., the word "appurtenant" means:
 - a) belonging to the type of building
- Considering Div. C, Table 3.5.2.1. and for purposes of exceptions to Designer qualifications under Clauses 3.2.4.1.(4)(c) and Subclauses 3.2.5.1.(2)(b)(ii) and 3.2.5.1.(2)(j)(i) and (ii), an ancillary building is only associated with the following Type of Building:
 - a) House

OBC reference: Div. C, Row 1 of Table 3.5.2.1.

- Consider a Designer who is required to provide designs of plumbing systems under the "House" Category of Qualification. He/she would need to successfully complete the technical examination associated with Div. C:
 - c) Row 5 or 6 of Table 3.5.2.1.
- 4. Consider the appointment of a Plumbing Inspector. To review plans and inspect plumbing in the "Small Buildings" Category of Qualifications. He/she would need to successfully complete the examination associated with Div. C:
 - d) Row 6 of Table 3.5.2.1.

- Consider a Person to be authorized by a RCA to carry out plans review and inspections of all building systems, works, fixtures and services systems that are appurtenant to Part 3 buildings [Div. A, Article 1.1.2.2.] and Part 9 buildings [Div. A, Article 1.1.2.4.]. He/she would need to successfully complete the examination associated with Div. C:
 - d) Row 8 of Table 3.5.2.1.

OBC References: From Div. C, Table 3.5.2.2. Building Services for Small, Large and Complex Buildings sends you to Row 8 of Table 3.5.2.1.

- A consideration of the Examination Syllabus for Large Buildings indicates that a Designer, Inspector, RCA or Person authorized by a Registered Code Agency who intends to challenge this examination;
 - a) can expect to have questions dealing with Rapid Transit Stations
- Sentences 1.1.1.3.(1) of the CCBFC, National Farm Building Code of Canada 1995 and 1.3.1.2.(3) of Division A inform us:

that the construction of farm buildings must conform to the appropriate requirements in Ontario Regulation 403/97 (Building Code) as it read on December 30, 2006 except as specifically amended or exempted by the provisions of this (farm) Code.

Consequently, for the designer of a 2 storey farm building with a building area of 610 m² requires the qualifications set out in:

b) row 3 of Table 3.5.2.1. of Division C

OBC references: Div. C, Sentences 3.2.2.1.(1) & 3.2.2.2.(1)

Exercise # 2

- Not considering a person who is the holder of a Certificate of Practice or a Temporary Licence issued under the Architects Act or is the holder of any licence or certificate issued under the Professional Engineers Act, a consideration of Div. C, Sentence 3.2.1.1.(1) and Subsection 3.2.2. indicates that the qualifications prescribed in Section 3.2. of the Ontario Building Code are:
 - required of Designers engaged in the business of providing design activities to the public and Other Designers
- 2. A person associated with Div. C, Clause 3.2.4.2(1)(a) is:
 - a Designer engaged in the business of providing design activities to the public who is not an Architect or Professional Engineer

OBC reference: Div. C, Sentence 3.2.2.1.(1)

- 3. A person associated with Div. C, Clause 3.2.5.1.(1)(a) is:
 - an Other Designer not engaged in the business of providing design activities to the public or exempted from registration by Div. C, Sentences 3.2.4.1.(3) and (4) and who is not an Architect or Professional Engineer

OBC reference: Div. C, Sentence 3.2.2.2.(1)

- Consider Column 2 of Div. C, Table 3.5.2.2., the Building Code Act and the Building Code
 Qualification Examination Syllabi. The person referred to in Div. C, Clause 3.4.3.2.(1)(a) would need
 to successfully complete the:
 - b) Legal/Process Examination on Powers and Duties of a Registered Code Agency
- 5. Consider Column 2 of Div. C, Table 3.5.2.2., the Building Code Act and the Building Code Qualification Examination Syllabi. The person referred to in Div. C, Clauses 3.4.3.2.(1)(b) and (c) who have successfully completed the examination program of the Ministry of Municipal Affairs and Housing would be entitled to carry out plans review and inspection activities on behalf of:
 - d) a Registered Code Agency

- Consider the technical competencies required of a Registered Code Agency to register in the "Small Buildings" Class of Registration of Div. C, Table 3.5.2.2. To carry out plans review and inspection activities, the RCA must employ Person(s) who have successfully completed the following examinations from Div. C, Table 3.5.2.1..
 - "Small Buildings", "Plumbing All Buildings", "Building Services", "Building Structural" and "On-site Sewage Systems"

OBC References: Div. C, Row 2 of Table 3.5.2.2. which references Rows 2, 6, 8, 9 and 10 of Table 3.5.2.1.

Exercise #3

- The Categories of Qualifications for Chief Building Officials whose duties include plans review or inspection activities, can be found in:
 - c) Div. C, Rows 1 to 12 of Table 3.5.2.1.

OBC References: Div. C, Clause 3.1.2.1.(1)(b) → 3.1.4.1.(1)(a) and Sentences 3.1.9.1.(1), 3.5.1.1.(1) and 3.5.2.1.(1)

For each type of Building Official identified in Row 1 of the Table on the next page, insert the
appropriate reference from Section 15.11 of the BCA and Div. C, Section 3.1. These are the
qualifications that Chief Building Officials and Inspectors must have to be appointed OR to remain
appointed if they were appointed before December 31, 2005.

Qualifications of Building Officials to be appointed and to remain appointed after December 31, 2005	CBO §	CBO/I	I/CBO-P	I/CBO-SS Ø	Supervisors and Managers of Inspectors	Inspectors, including Fire Chiefs as OBC Inspectors under Div. C, Subsection 1.3.4.
	BCA REQUIR	REMENTS FOR	QUALIFICATIONS	OF BUILDING OF	FFICIALS	
Requirement to have the qualifications as set out in the OBC	15.11-(1)	15.11-(1)	15.11-(2)	15.11-(2)	15.11-(3)	15.11-(3)
Prohibition to misrepresent qualifications	15.11-(7)	15.11-(7)	15.11-(7)	15.11-(7)	15.11-(7)	15.11-(7)
2	BC PRESCRIB	ED QUALIFICAT	TIONS FOR BUILT	DING OFFICIALS	in Division C	
Successful completion of MAH Legal/Process Examination on Powers and Duties of a CBO	3.1.2.1.(1)(a)	3.1.2.1.(1)(a)	3.1.2.1.(1)(a)	3.1.2.1.(1)(a)	3.1.3.1.(1)(a)	
Successful completion of MAH General Legal/Process Examination			{	kan kan mana di santa manana na kan di sangan na		3.1.4.1.(1)(a)
Successful completion of MAH examinations related to category of qualifications in Div. C, Column 3 of Table 3.5.2.1.		3.1.2.1.(1)(b)	3.1.2.1.(1)(b)	3.1.2.1.(1)(b) note (1)	3.1.3.1.(1)(b) in any one category	3.1.4.1.(1)(a) note ⁽¹⁾
File information set out in Div. C, Sentence 3.1.6.1.(1) with the Director	3.1.2.1.(1)(c)	3.1.2.1.(1)(c)	3.1.2.1.(1)(c)	3.1.2.1.(1)(c)	3.1.3.1.(1)(c)	3.1.4.1.(1)(b)

Technical qualification under Row 10 of Division C, Table 3.5.2.1., for I/CBO-SS and Inspectors of on-site sewage systems are continued provided they were filed with the Director, under Article 2.11.3.1. as it read prior to September 1, 2003.

- The building code requirements for the qualifications of Chief Building Officials and Inspectors do not apply to plans review and inspections related to:
- a) site services including surface drainage and underground plumbing located either outside or under a building,
- b) the construction of a:
 - __i) factory-built house certified to CAN/CSA-A277, "Procedure for Certification of Factory-Built Houses",
 - ii) mobile home conforming to CAN/CSA-Z240 Series. Mobile Homes,
 - iii) park model trailer conforming to CAN/CSA-Z241 Series, Park Model Trailers"
 - iv) signs

OBC references: Div. C, Clauses 3.1.1.1.(2)(a) to (e)

Exercise # 4

1. In the space provided, insert the appropriate BCA or OBC reference for the stated qualification.

Qualifications for Registration of Registered Code Agencies	
BCA REQUIREMENTS FOR RCAS	BCA REFERENCES
Requirement to have the qualifications and meet the requirements set out in the OBC	15.11-(4)
Prohibition to misrepresent RCA qualifications	15.11-(7)
Requirement for RCA to have the insurance coverage specified in the OBC	15.13-(1)
Prohibition to misrepresent RCA insurance coverage	15.13-(3)
OBC Prescribed Qualifications for Registration of RCAs	OBC Div. C REFERENCES
The Director may register a RCA, in each Class of Registration in Column 1 of Table 3.5.2.2. (subject to Article 3.4.3.9.) if:	3.4.3.2.(1)
the RCA and Person(s) authorized by the RCA has/have successfully completed the Legal/Process Examination related to the powers and duties of a RCA	3.4.3.2.(1)(a)
Other Person(s) authorized by the RCA to only carry out plans review and inspection activities, has/have successfully completed the General Legal/Process Examination	3.4.3.2.(1)(b) and 3.4.3.2.(1)(c)
the RCA and all Person(s) authorized by the RCA to carry out plans review and inspection activities, has/have also successfully completed the Technical Examinations related to the Type of Building set out in Column 3 of Table 3.5.2.2. for the corresponding Class of Registration in Column 1 and Category of Qualification in Column 2 of said Table	3.4.3.2.(1)(b) and 3.4.3.2.(1)(c)
the RCA has a Quality Management Plan, referred to in Sentence 3.4.3.3.(3) that is acceptable to the Director	3.4.3.2.(1)(d)
the RCA has the insurance coverage required by Subsection 3.6.2.	3.4.3.2.(1)(e)
the application is complete, and	3.4.3.2.(1)(f)
the fees required under Article 3.4.3.5. are paid	3.4.3.2.(1)(g)

NOTA BENE: These provisions of the BCA and the Code apply to Architects and Professional Engineers as Registered Code Agencies.

- A designer who is not an Architect or a Professional Engineer must have the qualifications and meet the requirements set out in the OBC when he/she prepares a design, gives information, or an opinion, whether a building or part thereof complies with the OBC in connection with:
 - a) an application for a permit .

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 a request to authorize a change to permit information referred to in Subsection 8.-(12) or 8.-(13) of the BCA, or

BCA References: Paragraphs 15.11-(5) 1. i and ii.

 Insert the appropriate BCA references for the stated qualification for Designers and the OBC references for the prescribed qualifications for the registration of Designers engaged in the business of providing design activities to the public and the OBC prescribed qualifications of Other Designers.

Qualifications for Designers	
BCA REQUIREMENTS for QUALIFICATIONS OF DESIGNERS	BCA REFERENCES
Requirement for Designer to have qualifications and meet the requirements set out in the OBC	15.11-(5)
Prohibition to misrepresent Designer's qualifications	15.11-(7)
Requirement for Designer to have the insurance coverage specified in the OBC	15.13-(1)
A builder or vendor registered with the ONHWPA is exempt from Designer's duty to have insurance coverage	15.13-(2)
Prohibition to misrepresent Designer's insurance coverage	15.13-(3)
OBC Prescribed Qualifications for Registration of Designers providing design activities to the public	OBC Div. C REFERENCES
to have qualifications set out in Sentence 3.2.4.1.(1)	3.2.2.1.(1)
Subject to Article 3.2.4.9. the Director may register a person (business entity) in each Class of Registration in Column 2 of Table 3.5.2.1. if:	3.2.4.2.(1)
the applicant must successfully complete the MAH examination relating to the person's knowledge of the BCA [Designer Legal/Process Examination as a minimum] and the OBC in relation to the Category of Qualifications in Column 3 of Table 3.5.2.1. that correspond to the Class of Registration of the business entity in Column 2	3.2.4.2.(1)(a)
all persons who on behalf of the registered business entity will review and take responsibility for providing design activities to the public have successfully completed the MAH examinations relating to the person's knowledge of the BCA [Designer Legal/Process Examination as a minimum] and the OBC in the Category of Qualifications set out in Column 3 of Table 3.5.2.1. for the Class of Registration of the business entity in Column 2	3.2.4.2.(1)(b)
the business entity providing design activities to the public has the insurance required by Subsection 3.6.2.	3.2.4.2.(1)(c)
the application is complete, and	3.2.4.2.(1)(d)
the fees required under Article 3.2.4.5. are paid	3.2.4.2.(1)(e)

NOTA BENE: The provisions of the BCA and of the Code for designer qualifications do not apply to Architects and Professional Engineers.

OBC Prescribed Qualifications for Other Designers not engaged in the business of providing design activities to the public or exempt from registration	OBC Div. C REFERENCES
Other Designers to have the qualifications set out in Sentence 3.2.5.1.(1)	3.2.2.2.(1)
Other Designer who undertake design activities need to successfully complete the MAH examination relating to the person's knowledge of the BCA [Designer Legal/Process Examination as a minimum] and the OBC in relation to the Category of Qualifications in Column 3 of Table 3.5.2.1. that corresponds to the type of building in Column 4	3.2.5.1.(1)(a)
Other Designer to file information set out in Sentence 3.2.5.3.(1) with the Director	3.2.5.1.(1)(b)

4. To satisfy the requirements of Div. C, Clause 3.2.4.2.(1)(c) a Designer who is not an Architect or a Professional Engineer and who is engaged in the business of providing design activities to the public must be covered by the insurance required under Subsection 3.6.2. Complete the following Table by inserting the associated billing fee for the stated insurance coverage and support your answer with OBC references.

Insurance Coverage for Designers Engaged in the Business of Providing Design Activities to the Public		
Limit of indemnity during any one period of insurance	Amount of fees billed in the 12 months immediately before the issuance of the policy	OBC Div. C REFERENCE
\$1,000,000 per claim and \$2,000,000 in the aggregate	\$100,000 or more	Sub-Subclause 3.6.2.3.(1)(f)(i)(A)
\$500,000 per claim and \$1,000,000 in the aggregate	more than \$50,000 and less than \$100,000	Sub-Subclause 3.6.2.3.(1)(f)(i)(B)
\$250,000 per claim and \$500,000 in the aggregate	\$50,000 or less	Sub-Subclause 3.6.2.3.(1)(f)(i)(C)

5. In your own words, complete the following statement. If the Designer engaged in the business of providing design activities to the public has been registered for less than one year before the issuance of the policy, the amount of insurance per claim and in the aggregate is determined: from the estimated fees billings for the 12 month period immediately after the issuance of the policy.

OBC Reference: Div. C, Sub-Subclause 3.6.2.3.(1)(f)(i)(D)

Exercise # 6

 Insert the appropriate BCA or OBC reference for the stated Sewage System Installer qualifications requirement.

Qualifications for Registration of Sewage Systems Installers	
BCA REQUIREMENTS FOR QUALIFICATIONS OF SEWAGE SYSTEMS INSTALLERS	BCA references
requirement for Sewage Systems Installers to have the qualifications and meet the requirements set out in the OBC	15.12-(1)
Prohibition to misrepresent Sewage Systems Installer qualifications	15.12-(2)

OBC Prescribed Qualifications for Registration of Sewage Systems Installers (in this case it is registration without insurance coverage)	OBC Div. C references
Subject to 3.3.3.9. the Director may register a Sewage System Installer if:	3.3.3.2.(1)
the Sewage Systems Installer has on staff Installer Supervisor(s) that has successfully completed the MAH examination relating to the person's knowledge of the BCA, the OBC and the construction, maintenance and operation of sewage systems	3.3.3.2.(1)(a)
the application is complete, and	3.3.3.2.(1)(b)
the fees required under Article 3.3.3.5. are paid	3.3.3.2.(1)(c)

 In the space provided in the following Table, insert the appropriate Division C reference associated with the statement in Column 1.

	Public Designers	Sewage Systems Installers	RCAs
The Director may:			
refuse to register an applicant or to renew a registration	3.2.4.9.(1)(a)	3.3.3.9.(1)(a)	3.4.3.9.(1)(a) and (b)
suspend or revoke a registration	3.2.4.9.(1)(b)	3.3.3.9.(1)(b)	3.4.3.9.(1)(c)
When:			
the registered person is in contravention of the BCA or the OBC	3.2.4.9.(2)(a)	3.3.3.9.(2)(a)	3.4.3.9.(2)(a)
the registered person is in breach of a condition of registration other than the requirement to have insurance coverage	3.2.4.9.(2)(b)	(1)	3.4.3.9.(2)(b)
the registered person is in breach of a condition of registration	(1)	3.3.3.9.(2)(b)	(1)
the registration was issued on the basis of mistaken, false or incorrect information	3.2.4.9.(2)(c)	3.3.3.9.(2)(c)	3.4.3.9.(2)(c)
the Director is of the opinion that the past conduct of the person affords reasonable grounds to believe, that the business will not be carried on in accordance with law	3.2.4.9.(2)(d)	3.3.3.9.(2)(d)	3.4.3.9.(2)(d)
the Director is of the opinion that there are reasonable grounds to believe that the activities of the person will be carried out in a manner that poses a threat to public safety	(1)	(1)	3.4.3.9.(2)(e)
an order under Ss. 69(2) of the <i>Provincial Offences Act</i> is directing that the registration not be issued or suspended until a fine is paid	(1)	3.3.3.9.(2)(e)	(1)
the application is incomplete, or	3.2.4.9.(2)(e)	3.3.3.9.(2)(f)	3.4.3.9.(2)(f)
any fees required are unpaid.	3.2.4.9.(2)(f)	3.3.3.9.(2)(g)	3.4.3.9.(2)(g)

⁽¹⁾ Statement in Column 1 has no application to the person identified in the heading of the column.

The Director must refuse to register an applicant, refuse to renew a registration, or suspend or revoke
the registration of a Designer engaged in the business of providing design activities to the public or
that of a Registered Code Agency when the Director is made aware:

that the person is not covered by the insurance coverage required by Subsection 3.6.2. of Div. C;

of an order under Subsection 69(2) of the Provincial Offences Act directing that the registration be suspended or that no registration be issued until a fine is paid.

OBC References for Designers engaged in the business of providing design activities to the public:

Div. C, Clauses 3.2.4.10.(2)(a) and (b)

OBC References for Registered Code Agencies:

Div. C, Clauses 3.4.3.10.(2)(a) and (b)

- When the Director proposes to refuse to register or renew a registration or proposes to suspend or revoke a registration the decision to do so may be appealed to the:
 - d) License Appeal Tribunal

OBC References for Designers engaged in the business of providing design activities to the public:

Div. A, Clause 14.1.2.(1)(b) definition of Tribunal and Div. C, Sentence 3.2.4.9.(4)

OBC References for Firms engaged in the business of constructing on site, installing, repairing, servicing, cleaning or emptying sewage systems:

Div. A, Clause 1.4.1.2.(1)(b) definition of Tribunal and Div. C, Sentence 3.3.3.9.(4)

OBC References for Registered Code Agencies:

Div. A, Clause 1.4.1.2.(1)(b) definition of Tribunal and Div. C, Sentence 3.4.3.10.(6)

Exercise #8

 For Chief Building Officials, Inspectors who have the same powers as a CBO in relation to Sewage Systems or Plumbing and Inspectors, complete the following Table by inserting the Division C reference for the stated requirement.

Public Register Information for: - Chief Building Officials - I/CBO-P and I/CBO-SS - Inspectors	OBC Div. C REFERENCE
The name of the Building Official	3.1.8.1.(2)(a)
The Building Official's Building Code Identification Number (BCIN)	3.1.8.1.(2)(b)
The name of each Principal Authority that has appointed the Building Official	3.1.8.1.(2)(c)
The qualifications of the Building Official	3.1.8.1.(2)(d)

 For Designers engaged in the business of providing design activities to the public complete the following Table by inserting the Division C reference for the stated requirement. (Registered Person=Firm=Business Entity*)

Public Register Information for: - Designers engaged in the business of providing design activities to the public	OBC Div. C REFERENCE
The name of the registered person*	3.2.6.1.(2)(a)
The registered person's* Building Code Identification Number (BCIN)	3.2.6.1.(2)(b)
The business address of the registered person*	3.2.6.1.(2)(c)
The Classes of Registration of the registered person* under Column 2 of Table 3.5.2.1. of Division C	3.2.6.1.(2)(d)
The names of the persons who will review and take responsibility for design activities on behalf of the registered person* in each class of registration	3.2.6.1.(2)(e)
The Building Code Identification Number (BCIN) of each person who will review and take responsibility for design activities on behalf of the registered person*	3.2.6.1.(2)(f)

 For Other Designers not engaged in the business of providing design activities to the public, or exempt from registration complete the following Table by inserting the Division C reference for the stated requirement.

Public Register Information for: - Other Designers not engaged in the business of providing design activities to the public, or exempt from registration	OBC Div. C REFERENCE
The name of the Other Designer	3.2.6.1.(3)(a)
The Other Designer's Building Code Identification Number (BCIN)	3.2.6.1.(3)(b)
The qualifications of the Other Designer who will review and take responsibility for design activities	3.2.6.1.(3)(c)

For persons engaged in the business of constructing on site, installing, repairing, servicing, cleaning
or emptying sewage systems complete the following Table by inserting the Division C reference for
the stated requirement. (Registered Person=Firm=Business Entity*)

Public Register Information for: - Persons* engaged in the business of constructing on site, installing, repairing, servicing, cleaning or emptying sewage systems	OBC Div. C REFERENCE
The name of the registered person*	3.3.4.1.(2)(a)
The registered person's* Building Code Identification Number (BCIN)	3.3.4.1.(2)(b)
The business address of the registered person*	3.3.4.1.(2)(c)
The names of the persons (installer supervisor) who will supervise the construction on site, installing, repairing, servicing, cleaning or emptying sewage systems on behalf of the registered person*	3.3.4.1.(2)(d)
The Building Code Identification Number (BCIN) of each person who will supervise the construction on site, installing, repairing, servicing, cleaning or emptying sewage systems on behalf of the registered person*	3.3.4.1.(2)(e)

 For Registered Code Agencies complete the following Table by inserting the Division C reference for the stated requirement. (Registered Code Agency=Registered Person=Firm=Business Entity*)

Public Register Information for: - Registered Code Agencies	OBC Div. C REFERENCE
The name of the registered person*	3.4.4.1.(2)(a)
The registered person's* Building Code Identification Number (BCIN)	3.4.4.1.(2)(b)
The business address of the registered person*	3.4.4.1.(2)(c)
The Classes of Registration of the registered person* under Column 1 of Table 3.5.2.2. of Division C	3.4.4.1.(2)(d)
For each Class of Registration the names and the Building Code Identification Number (BCIN) of the persons who will exercise powers and perform functions under the BCA on behalf of the registered person*	3.4.4.1.(2)(e)

MODULE FIVE - THE PERMIT APPLICATION AND ISSUANCE PROCESS

Exercise # 1

A 9 m² sunroom addition to a detached dwelling.
 Yes, The addition falls within the definition of construct as an extension to an existing building.

BCA References: Subsections 1.-(1) and 8.-(1)

A Municipal Park washroom, with plumbing, occupying an area less than 10 m².
 Yes. Since the structure contains plumbing, its size need not be greater than 10 m² to be considered a building.

BCA References: Clause 1.-(1)(b) and Subsection 8.-(1)

A Provincial Park washroom, with plumbing, occupying an area less than 10 m².
 No. While a structure that contains plumbing and is not greater than 10 m² in area is considered a building, the Building Code Act does not bind the Crown.

Legislation Act 2006 Reference: Section 71

4. Excavation for the construction of a building.

Yes, a permit is required prior to excavation for a building. Although the definition of construct does not specifically refer to excavation, the OBC defines "Excavation" in Div. A, Clause 1.4.1.2.(1)(b) and deals with "Excavation" in Div. B, Subsection 4.2.5. and Section 9.12.

Also, if the foundations of the new building are within the angle of repose of the soil from the bottom of the footings of an adjacent building, the foundations for the new building must be designed by a professional engineer. [Div. C, 1.2.1.1.(5).]

BCA References: Subsections 1.-(1) and 8.-(1)

A retaining wall 1.2 m in exposed height and adjacent to a sidewalk providing access to a building. Yes. The retaining wall meets the definition of building as a designated structure.

BCA and OBC References: Clause 1.-(1)(d) and Subsection 8.-(1) Div. A, Subclause 1.3.1.1.(1)(a)(ii)

Installation of insulation in the exterior walls of a century-old house intended for use on a continuing basis during the winter months.

Yes. Installation of insulation into the exterior walls of a house intended for use on a continuing basis during the winter months is a material alteration

BCA & case law Reference: Subsections 1.-(1) definition of construct, 8.-(1) and R. V. King case law

Installation of insulation in the exterior walls of a three year old cottage used as a seasonal recreational building.

Yes. While buildings of residential occupancy used as seasonal recreational buildings are exempted from the minimum thermal resistance of thermal insulation, where insulation is provided, the installation shall comply with the technical requirements of the Code.

BCA and OBC Reference: Subsections 1.-(1) definition of construct, 8.-(1) and Div. B, Sentences 9.36.2.1.(3) and (5)

installation of a wood stove and associated chimney in an existing building.
 Yes. Because a wood stove and chimney fall within the definition of building as "...service systems appurtenant thereto", its installation would be construction as a "material alteration".

BCA References: Subsections 1.-(1) and 8.-(1)

 Demolition of the herdsman house on a farm.
 No. The demolition of a building located on farm is exempt from the requirement of a permit under Section 8 of the BCA.

OBC Reference: Div C, Clause 1.3.1.1.(1)(a)

- Construction and demolition of an Aeroplane Hanger on Crown Land and privately owned land.
 No. This is entirely within the federal jurisdiction.
- Construction of an Airport Terminal Building with food premises, retail areas, offices and car rental outlets.

No. This is entirely within the federal jurisdiction.

Exercise # 2

- As a general rule, the prescribed period of Sentences 1.3.1.3.(1) to (3), for purposes of an application for a permit under Subsection 8.-(1) of the BCA, begins on the day after:
 - d) the day on which an application meeting the requirements of Sentence 1.3.1.3.(5) is made and the day on which the payment of fees required to be paid on application is made

OBC References: Div. C, Clauses 1.3.1.3.(6)(a) and (b)

- 2. When the same Principal Authority is responsible for the enforcement of the BCA and all of the provisions of the OBC, including the provisions of Part 8 Sewage Systems, the prescribed period of Sentences 1.3.1.3.(1) to (4), for purposes of an application for a permit under Subsection 8.-(1) of the BCA, begins on the day after:
 - the day on which an application meeting the requirements of Sentence 1.3.1.3.(5) is made and the day on which the payment of fees required to be paid on application is made

OBC References: Div. C, Clauses 1.3.1.3.(6)(a) and (b)

- 3. When a Principal Authority is responsible for the enforcement of the BCA and the provisions of the OBC, except the provisions of Part 8 Sewage Systems, which are enforced by another Principal Authority under the authority of Section 3.1 or 6.2 of the BCA, as the case may be, the prescribed period of Sentences 1.3.1.3.(1) to (4), for purposes of an application for a permit under Subsection 8.-(1) of the BCA, begins on the day after:
 - c) the day on which an application meeting the requirements of Sentence 1.3.1.3.(5) is made, the day on which the payment of fees required to be paid on application is made and the day on which the permit for the proposed construction or demolition of the sewage system is issued

OBC References: Div. C, Clauses 1.3.1.3.(6)(a) and (b), Sentence 1.3.1.3.(8) and Clauses 1.3.1.3.(9)(a) to (c)

- To satisfy Subsection 8.-(1.1) of the BCA, after June 30, 2005 the owner or the authorized agent of the owner who makes an application for a permit to construct or demolish will be compelled to use the form that is:
 - d) approved by the Minister of Municipal Affairs and Housing

OBC References: Div. C, Sentence 1.3.1.2.(2) and Clause 1.3.1.3.(5)(a)

- According to the OBC, an application for a permit under Section 8 of the BCA may be made by the owner of the property on which the proposed construction or demolition is to take place. Accordingly, "owner" means:
 - a) the registered owner, a lessee and a mortgagee in possession

OBC Reference: Div. C, Sentence 1.3.1.2.(3)

- By way of Subsection 8.-(1.1) of the BCA, Clause 1.3.1.2.(1)(b) of Division C informs us that the
 application for a permit under Section 8 may be made by the authorized agent of the owner.
 Consequently, when considering an application submitted by the "authorized agent of the owner", the
 CBO:
 - a) may request a written authorization from the owner
- Where a RCA is not involved, a Chief Building Official is empowered by the BCA to refuse to issue a permit to construct or demolish when:
 - the proposed building, construction or demolition will contravene the BCA, the OBC*, or any other applicable law;
 - the applicant is a builder or vendor as defined in the Ontario New Home Warranties Plan Act and is not registered under that Act;
 - the designer [who is not an Architect or Professional Engineer and] who prepared the drawings, plans, specifications and other documents does not have the qualifications or insurance if any required by the OBC;
 - 4. the application is incomplete; or
 - 5. any fees due have not been paid.

BCA References: Clauses 8.-(2)(a), (b), (c), (e) and (f)

*Facilitator/Self-Study Participant Note: Fire Safety matters may be responsibility of Inspector who is Fire Chief, see Div. C, Article 1.3.4.1.

NOTA BENE: The effect of Clause 8.-(2)(c) was modified by the decision of the Divisional Court on May 17, 2007, to exclude Architects and Professional Engineers.

- Clause 8.-(2)(a) of the BCA, says in part: "...the CBO shall issue the permit unless the proposed building, construction or demolition will contravene the OBC..." Accordingly, this phrase of the BCA imposes a duty to:
 - review the application, schedules, plans, specifications, sketches, drawings and graphic representations to determine whether the proposed building, construction or demolition complies with the requirements of the OBC

BCA References: Subsection 8.-(1.1), Clause 8.-(2)(a) and Subsection 15.11-(6)

- 7. In deciding whether to issue or to refuse to issue a permit to construct or demolish under Subsection 8.-(1) of the BCA, the CBO must determine if the proposed building, construction or demolition, will contravene any other applicable law. For purposes of Section 8 of the BCA, the applicable law is listed in:
 - a) Division A, Sentence 1.4.1.3.(1)

- An application for a permit under Section 8 of the BCA is complete and starts the clock that determines the prescribed time within which the CBO must decide to issue or refuse the permit, when:
 - 1. It is made in the form approved by the Minister of Municipal Affairs and Housing
 - it is signed by the owner of the property on which the proposed construction or demolition is to take place or his/her authorized agent
 - it is accompanied by the types and quantities of plans and specifications specified in the instrument.
 - 4. all applicable fields on the application form and required schedules are completed,
 - 5. attachments indicated as being attached to the application are submitted with the application, and
 - 6. it is accompanied by the payment of fees required to be paid on application.

OBC Reference: Div. C, Clauses 1.3.1.3.(5)(a) to (e) and 1.3.1.3.(6)(a) and (b)

- For purposes of Subsection 8.-(2.2) of the BCA, the prescribed time period within which the CBO must determine whether to issue or refuse an application for a permit under Subsection 8.-(1) of the BCA, is found in:
 - c) Div. C. Article 1.3.1.3. and Table 1.3.1.3.
- 10. For purposes of Subsection 8.-(2.2) of the BCA, the time period for deciding whether to issue the permit or refuse to issue it (not an application for a Conditional Permit) in the case of a detached house that is to be provided with an on-site sewage system when the same principal authority is responsible for the enforcement of the provisions of Part 8 Sewage Systems, is:
 - b) 10 days

OBC References: Div. C, Clauses 1.3.1.3.(3)(a) and (b) and 1.3.1.3.(4)(c) and Row 2 of Table 1.3.1.3.

- 11. An application, for a permit under Subsection 8.-(1) of the BCA, is complete and starts the clock that determines the prescribed time within which the CBO must decide to issue or refuse the permit, when:
 - 1. It is made in the form approved by the Minister of Municipal Affairs and Housing
 - it is signed by the owner of the property on which the proposed construction or demolition is to take place or his/her authorized agent
 - it is accompanied by the types and quantities of plans and specifications prescribed in the instrument of the Principal Authority.
 - 4. all applicable fields on the application form and required schedules are completed,
 - 5. attachments indicated as being attached to the application are submitted with the application.
 - 6. it is accompanied by the payment of fees required to be paid on application, and
 - 7. the permit for the on-site sewage system has been issued by the "Other Principal Authority".

OBC References: Div. C, Clauses 1.3.1.3.(5)(a) to (e), 1.3.1.3.(6)(a) and (b) and 1.3.1.3.(8)(a) to (c) and 1.3.1.3.(9)(a) to (c)

12.(a) Consider Clause 8.-(2)(c) and Subsection 15.11-(5) of the BCA and Division C, Sentences 3.2.2.1.(1), 3.2.2.2.(1), 3.2.4.1.(3) and 3.2.5.1.(2) and complete the following Table by inserting the appropriate reference for the design activities that are exempt from Designer Qualifications under Div. C, Section 3.2. "Qualifications for Designers".

desig	gn activities that are EXEMPT from the requirement to have gner registration under 3.2.4. and qualifications under 3.2.5. the person's design activities relate only to:	Designer that provides design activities to the public Exemption 3.2.4.1.(3)	Other Designer Exemption
1	construction of a farm building that is: of low human occupancy 2 storeys or less in building height, and less than 600 m² in building area	(c)	(c)
2	a sewage system to be constructed by:		
2(a)	a Registered Sewage System Installer	(e)	(d)(i)
2(b)	the owner	(b)	(d)(ii)
3	construction of tents that do not contain bleachers, and are not enclosed with sidewalls, and do not exceed 225 m² in: ground area, or aggregate ground area and are closer than 3 m apart	(f)	(e)
4	construction of signs	(9)	(f)
5	Construction of all site services including:		
5(a)	surface drainage	(h)(i)	(g)(i)
5(b)	plumbing located underground, either outside or under a building	(h)(ii)	(g)(ii)
6	construction of pre-engineered elements of a building if the design of the element is carried out by a person competent in the specific discipline appropriate to the circumstances	(1)	(h)
7	construction of appliances, equipment and similar incidental components of a building	(m)	(i)
8	construction of a building for which a permit under Section 8 of the BCA is applied for or issued before January 1, 2006 provided that construction starts within six months after the permit is issued	(n)	(k)

12.(b) Consider Clause 8.-(2)(c) and Subsection 15.11-(5) of the BCA and Div. C, Sentences 3.2.2.1.(1), 3.2.2.2.(1), 3.3.4.1.(3) and (4) and complete the following Tables by inserting the appropriate reference for the design activities that are exempt from <u>REGISTRATION</u> AS A DESIGNER ENGAGED IN THE BUSINESS OF PROVIDING DESIGN ACTIVITIES TO THE PUBLIC.

the b	A Designer is EXEMPT from the requirement to <u>register</u> as a designer engaged in the business of providing design activities to the public <u>when</u> the person's design activities relate only to:	
1	construction of a home as defined in the ONHWPA that will be constructed or sold by a builder or vendor that is registered under the ONHWPA and the designer is the builder or vendor or is an employee of the builder or vendor	(a)
2	construction of a building that is owned by that person	(b)
3	the extension, material alteration or repair of a detached house, semi-detached house, townhouse or row house containing not more than 2 dwelling units in each house	(d)
4	construction of a factory-built house certified to CAN/CSA-A277, "Procedures for Certification of Factory-Built Houses"	(i)
5	construction of a mobile home conforming to CAN/CSA-Z240 Series for mobile homes, structural and plumbing requirements, light duty windows, site preparation, foundation and anchorage	(j)
6	construction of a park model trailer conforming to CAN/CSA-Z241 Series, "Park Model Trailers"	(k)

busing are wi contain	Designer is EXEMPT from the requirement to <u>register</u> as a designer engaged in the business of providing design activities to the public <u>when</u> the person's design activities are with respect to a detached house, semidetached house, townhouse or row house containing not more than two dwelling units in each house and the design activities elate only to:	
1	a plumbing system	(a)
2	a heating, ventilation and air-conditioning system	(b)
3	ancillary buildings such as garages	(c)

12.(c) Consider Clause 8.-(2)(c) and Subsection 15.11-(5) of the BCA and Div. C, Sentences 3.2.2.2.(1) and 3.2.5.1.(2) and complete the following Table by inserting the appropriate reference for the design activities that are exempted from the **QUALIFICATIONS** of Other Designers.

A Designer is EXEMPT from the requirement to have the QUALIFICATIONS of Other Designer when the design activities relate only to:		Other Designer Qualifications Exemption 3.2.5.1.(2)
1	design activities for which a Registered Designer engaged in the business of providing design activities to the public or a qualified Other Designer reviews and takes responsibility for the design activities	(a)
2	construction of a building that is owned by that person when the building is	a:
2(a)	detached house, semi-detached house, townhouse or row house containing not more than 2 dwelling units in each house	(b)(i)
2(b)	an ancillary building that serves a building described in 2(a) above.	(b)(ii)
3	construction of an ancillary building (not owned by that person) that:	
3(a)	serves a detached house, semi-detached house, townhouse or row house if such house contains not more than two dwelling units, and	(j)(i)
3(b)	the ancillary building does not exceed 50 m ² in building area	(j)(ii)

 When the CBO decides to refuse to issue a Building or Demolition Permit applied for under Subsection 8.-(1) of the BCA, he/she will have to,

d) inform in writing the applicant of all the reasons for the refusal

BCA & OBC References: BCA Subsection 8.-(2.3) Div. C, Clause 1.3.1.3.(1)(b)

- 14. According to the OBC, the applicant for a Demolition Permit must retain a Professional Engineer to undertake the general review of the project where:
 - 1. the building exceeds 3 storeys in building height or 600 m² in building area,
 - 2. the building includes pre/post-tensioned structural members,
 - the demolition will extend within the angle of repose of the soil below the footings of an adjacent building, or
 - 4. explosives or a laser will be used during the demolition.

OBC Reference: Div. C, Clauses 1.2.2.3.(1)(a) to (d)

15. According to the OBC, when a Professional Engineer is required to undertake the general review of a demolition project, the application for the Demolition Permit must include a description of the: structural design characteristics of the building, and

the method of demolition.

OBC Reference: Div. C, Sentence 1.3.1.1.(3)

Exercise # 4

- 1. When a RCA has been duly appointed, compliance of the proposed construction or building with the requirements of the OBC, to satisfy part of Clause 8.-(2)(a) of the BCA is substantiated by the;
 - b) completed Plans Review Certificate that contains the information prescribed in Div. C, Article 3.7.4.3.

Not considering the Quality Management Plan under Div. C, Sentence 3.4.3.3.(3) provide BCA and OBC references:

BCA Reference: Clause 8.-(2)(d)

OBC References: Div. C, Sentences 3.7.4.3.(1), (2), (3), (7)

- According to the OBC, the RCA shall ensure that the plans review activities were carried out by a
 person who has, for the type of building set out in Column 3 of Table 3.5.2.2., the qualifications set out
 in:
 - c) Div. C, Clause 3.4.3.2.(1)(b) or (c)

OBC Reference: Div. C, Sentence 3.7.4.2.(1)

- According to the OBC, a Plans Review Certificate must be signed, on behalf of the appointed RCA, by a person who has the qualifications set out in Clause;
 - c) Div. C, Clause 3.4.3.2.(1)(a)

OBC Reference: Div. C, Sentence 3.7.4.3.(1)

4. The Plans Review Certificate as defined in Subsection 1.-(1) of the BCA is prescribed in Div. C, Sentence 3.7.4.3.(7). Specify the circumstances when the operative clause of the Instrument enacted by the Principal Authority under the enabling authority of Clause 7.-(1)(f) of the BCA may modify the Plans Review Certificate to satisfy special needs of the Principal Authority. The authority of the Principal Authority to enact an Instrument (By-law, Resolution or Regulation) and prescribe forms under Clause 7.-(1)(f) does not include the authority to modify prescribed forms, such as the Plans Review Certificate. The Principal Authority does NOT have the legislative authority to modify the prescribed forms.

BCA Reference: Subsection 7.-(9)

Exercise # 5

- 1. The authority to issue a Conditional Building Permit lies with the:
 - d) Chief Building Official and the Inspector or Designated Inspector who has the same powers and duties as the CBO in relation to Sewage Systems

BCA References: Subsections 8.-(3), 1.-(1.3), 3.1-(3) and 6.2-(4)

- Under the BCA, the initial authority to enter into a conditional permit agreement with the applicant and such other persons as the CBO determines lies with the:
 - a) Principal Authority

BCA Reference: Clause 8.-(3)(c)

- 3. When the CBO decides not to issue a Conditional Building Permit, his/her decision;
 - d) is not appealable under the BCA

BCA Reference: Subsection 25.-(1)

- 4. When the CBO decides not to issue a Conditional Building Permit, he/she is:
 - b) not required to provide the applicant with all of the reasons for the refusal of the Conditional Building Permit because there is no appeal process, under the BCA, from this decision and an application for a Conditional Permit under Subsection 8.-(3) of the BCA is NOT an application for a permit under Subsection 8.-(1) of the BCA

OBC References and reason for your choice: Sentences 1.3.1.3.(1), (2) and (3) all make reference to an application for a permit under Subsection 8.-(1) of the Act and not Subsection 8.-(3)

- 5. When Field E of the Application for a Permit to Construct or Demolish indicates that the purpose of the application is for a conditional permit, in deciding whether to issue or refuse to issue the conditional permit, the CBO:
 - b) is NOT compelled to comply with the time period set out in Article 1.3.1.3, and Table 1.3.1.3.

OBC References and reason for your choice: Sentences 1.3.1.3.(1), (2) and (3) all make reference to an application for a permit under Subsection 8.-(1) of the Act and not Subsection 8.-(3)"

- 1. A Chief Building Official is compelled by the BCA to issue a Change-of-Use Permit when,
 - 1. the building if used as proposed would comply with the BCA, the OBC and any applicable law,
 - 2. the application is complete, and
 - 3. any fees due are paid.

BCA References: Clauses 10.-(2)(a), (b) and (c)

- In deciding whether to issue the Change-of-Use Permit under Section 10 of the BCA or to refuse to
 issue it, the CBO must determine if the building if used as proposed will contravene any other
 applicable law. The definition of "applicable law" referenced in Clause 10.-(2)(a) of the BCA is found
 in:
 - a) Division A, Sentence 1.4.1.2.(2)
- As determined by the OBC, the following changes in use of a building or part thereof constitute an increase in hazard:
 - 1. a change of major occupancy designated with a "Y" in Div. C, Table 1.3.1.4.,
 - a suite of Group C major occupancy converted into more than one suite of Group C major occupancy.
 - a suite or part of a suite of Group A Division 2 or 4 major occupancy converted to a gaming premise,
 - 4. a farm building or part thereof is changed to a major occupancy.
 - 5. a building or part thereof is changed to a post-disaster building, or
 - 6. the previous major occupancy cannot be determined.

OBC References: Div. C, Clauses 1.3.1.4.(1)(a) to (f)

- 4. When it has been determined that a proposed change-of-use would result in an increase in hazard, the building must be evaluated using the provisions of Division B:
 - d) Part 10

OBC Reference: Div. A, Sentence 1.1.2.5.(1)

5. In the next table, consider the proposed change of use in Column 2 and in Columns 3 and 4 insert the word "yes" or "no" to indicate if the "Proposed Change-of-Use" is an "increase in hazard" requiring an evaluation under Div. B, Part 10 and if a "Change-of-Use Permit" is required under Section 10 of the BCA. Provide Div. C, references in Column 5.

	Proposed Change-of-Use	Increase in hazard requiring an evaluation under Part 10 of the OBC?	Change-of- Use Permit* under Section 10 of the BCA?	OBC Div. C Reference(s)
1	Changing a house (C) to an office(D)	Yes	Yes	Table 1.3.1.4. 1.3.1.4.(1)(a)
2	Changing a warehouse (F-3) to a suite of offices (D)	No	No	Table 1.3.1.4. 1.3.1.4.(1)(a)
3	Changing a nursing home (B-2) into a residential care facility (B-3)	No	No	Table 1.3.1.4. 1.3.1.4.(1)(a)
4	Changing a greenhouse on a farm to a retail store (E) for landscaping products in territory without municipal organization.	**	**	1.3.1.4.(3)
5	Changing a greenhouse on a farm in Ottawa to a retail store (E) for landscaping products	Yes	Yes	1.3.1.4.(1)(d)
6	Converting a vacant building to a dormitory for the homeless (C) where the previous use is uncertain	Yes	Yes	1.3.1.4.(1)(f)
7	Leasing part of an accounting office (D) to a travel agency (D)	No	No	no increase in hazard 1.3.1.4.(1) Table 1.3.1.4.
8	Converting a Public Works Garage to an Ambulance Garage	Yes	Yes	1.3.1.4.(1)(e)

^{*} no deficiencies identified so no construction required and none proposed

Complete the Permit Issuance Chart on the next page by inserting "YES" or "NO" in each cell.

^{**} exempted by the provisions of Division B

^{6.} Consider the situations in Rows 1 to 6 of Column 2.

PERMIT ISSUANCE CHART

		TYPE OF PERMIT REQUIRED UNDER BCA		BUILDING CODE DESIGN & CONSTRUCTION REQUIREMENTS [SEE NOTE				NOTE (1)]	
	SITUATION	Section 8 Building	Section 10						
		Permit Change of-Use Permi		Part 10 Evaluation Change- of-Use	Part 3 Construction Proposed or Required	Section 3.17. Construction Proposed if building < 5 years old	Part 9 Construction Proposed or Required	Section 9.41. Construction Proposed if building < 5 years old	Part 11 Renovation if building > 5 years old
1	Change of use proposed; increase in hazard [note(2)]; no construction proposed; no reduction in performance level; complies with Part 10.	NO	YES	<u>YES</u>	NO	<u>NO</u>	<u>NO</u>	<u>NO</u>	NO
2	Change of use proposed; increase in hazard [note(2)]; identified reduction in performance level can be satisfied under Part 10 without construction.	NO	YES	YES	NO	<u>NO</u>	<u>NO</u>	<u>NO</u>	NO
3	Change of use proposed; increase in hazard [note(2)]; no construction proposed, identified reduction in performance level require compensating construction.	YES	<u>NO</u>	YES	<u>YES</u>	YES	YES	YES	YES
4	Change of use proposed; construction proposed	YES	NO	NO	YES	YES	YES	YES	YES
5	No change in use proposed; construction proposed.	YES	NO	NO	YES	NO	YES	NO	YES
6	No change in use proposed; no consuluction proposed.	NO	NO	NO	NO	NO	<u>NO</u>	<u>NO</u>	NO
1	Column 2	Col 3	Col 4	Col 5	Col 6	Col 7	Col 8	Col 9	Col 10

NOTE:

- 1. The application of specific Code provisions from Division A, B and C would depend on occupancy type, size and age of the building.
- 2. <u>Increase in hazard</u> as determined from Div. C, Article 1.3.1.4. is used to determine IF AN EVALUATION IS REQUIRED when a change of use is proposed under Section 10 of the Building Code Act.

- 7. The Application for a Change-of-Use Permit under Section 10 of the Act is made on the form;
 - b) prescribed by the Principal Authority in the Instrument enacted under Clause 7.-(1)(f) of the BCA

BCA references: Clause 7.-(1)(f) and Subsection 7.-(9)

- 8. The issuance of a Change-of-Use Permit under Section 10 of the BCA;
 - a) is not subject to the rules of the BCA and OBC concerning the period within which the CBO must decide whether to issue or refuse the permit

OBC Reference: Div. C, Sentence 1.3.1.3.(1)

The Designer who will review and take responsibility for the plans for a Change-of-Use Permit under Section 10 of the BCA where no construction is proposed, must have the qualifications set out in:

a) does not require qualifications

OBC Reference and reason for your choice: Div. C, Sentence 3.2.1.1.(1) makes reference to qualifications for the purpose of Clause 8.-(2)(c) and Subsection 15.11-(5) of the Act and not for the purpose of a change-of-use permit under Section 10 of the Act.

- 10. The CBO, Supervisor, Manager or Inspector including a Fire Chief as an OBC Inspector under Subsection 1.3.4., who will review a building to determine compliance with Part 10 of the OBC where an Application for a Change-of-Use is not proposing any construction, must have the technical qualifications set out in:
 - d) Div. C, Column 3 of Table 3.5.2.1. for the type of building in Column 4

OBC References: Div. C, Clauses 3.1.2.1.(1)(b) → 3.1.4.1.(1)(a) for CBO, 3.1.3.1(1)(b) for Managers and Supervisors and 3.1.4.1.(1)(a) for all types of Inspectors

- 11. The RCA who will undertake the review of a building to determine compliance with Div. B, Part 10 where an Application for a Change-of-Use is not proposing any construction, must have the technical qualifications set out in:
 - d) the RCA is not empowered to perform any functions in connection with a permit under Section 10 of the BCA

BCA References: Subsections 4.1-(4) and 15.15-(1)

Exercise #8

1.a) Is the BMEC empowered to attach conditions to an Authorization? Why or why not? Yes. The BMEC is empowered to authorize "the use of any innovative material, system or building design, subject to any conditions...."

BCA Reference: Clause 28.-(4)(b)

Does the use of an innovative material, system or building design, as authorized by the BMEC contravene the OBC in any way?

No, provided the innovative material, system or building design is used in the manner authorized by the BMEC.

BCA Reference: Subsection 28.-(5)

- Under the OBC, the responsibility to maintain on the site of the construction one copy of any applicable BMEC authorization or facsimile thereof lies with the:
 - d) person in charge of the construction of the building

OBC Reference: Div. C, Clause 1.3.2.2.(1)(b)

- A review of BMEC Authorization # 02-08-279 reveals that HPB™ High Performance Bedding Aggregate is authorized for use in Div. B for:
 - b) the installation of drain tiles under Sentence 9.14.3.3.(4)

BMEC Authorization # 02-08-279 Reference: First Paragraph of Section 6. Authorization

3. In the event of a conflict between a BMEC Authorization and a Ruling by the Minister; which one takes precedence?

The Ruling by the Minister prevails

BCA Reference: Subsection 29.-(7)

4. Do you think that the BMEC and the CCMC are competing agencies? Why or why not? No, the BMEC and the CCMC are not competing agencies. When the CCMC has examined or expressed its intention to examine an innovative material, system or building design, the BMEC is not authorized to exercise its power under Subsection 28.-(4) of the BCA

BCA Reference: Subsection 29.-(8)

 Consider CCMC Evaluation Report № 12884-R. The product is not associated with a Ruling by the Minister of Municipal Affairs and Housing pursuant to Section 29 of the Building Code Act nor an Authorization by the Building Materials Evaluation Commission under the authority of Clause 28.-(4)(b). In you own words, specify the circumstance that would allow the use of this product as an airbarrier material.

The use of TYPAR® II Air Barrier Material as described in CCMC Evaluation Report № 12884-R would require acceptance, by a person having jurisdiction, as an alternative solution to the provisions of Division B, Article 9.25.3.2., "Air-Barrier System Properties".

OBC reference for use of Alternative Solutions: Div. A. Clause 1.2.1.1.(1)(b)

- 6. The applicant whose application to use an alternative solution for a material, system or building design was denied by the person having jurisdiction may:
 - 1. Apply to the BCC to resolve the issue, Subsection 24.-(1.1) of the BCA
 - 2. appeal the decision to the Ontario Superior Court of Justice. Subsection 25.-(1) of the BCA
 - 3. apply to the BMEC for an Authorization, Clause 28.-(4)(b) of the BCA
 - apply to the Minister of Municipal Affairs for a binding interpretation, Subsection 28.1-(1) of the BCA
 - apply to the Minister of Municipal Affairs and Housing for a Ruling, Clause 29.-(1)(a) or (c) of the BCA
 - 6. comply with the provisions (acceptable solutions) of Division B, Div. A, Clause 1.2.1.1.(1)(a) or
 - 7. submit a proposal to change the provisions of Division B.

MODULE SIX- EXERCISING LAWFUL ENTRY

Exercise #1

- Consider a Building Official, RCA or a Person authorized by a RCA and his/her right of entry to inspect construction to determine compliance with the BCA and the OBC, in;
- a) a premise, other than a room or place actually being used as a dwelling, where a permit has been applied for or issued.

The occupier needs to know the identity of the person, who may enter, without a warrant, at any reasonable time for the purpose of inspecting the building or site

BCA References: Subsection 12.-(1) and paragraph 1. of Subsection 15.17-(3)

- a public premise, not a room or place actually used as a dwelling for an area designated for authorized personnel only, where a permit has not been applied for nor issued and Building Official has reason to believe activity requiring a permit under the BCA is going on.
 - 1. The person authorized by a RCA has no role to play
 - 2. By implication Building Officials can enter a public premise during hours of business
- c) A room or place actually used as a dwelling, where a permit has been applied for or issued and an inspection has not been requested.

The Building Official, RCA and the Person authorized by a RCA need to identify themselves and require the informed and voluntary consent of the occupier or a warrant to enter and inspect.

BCA References for the Building Official: BCA Subsection 12.-(1) & Clause 16.-(1)(a)

BCA References for the Person authorized by an RCA: Paragraphs 1, and 3, of Subsection 15.17(3), Subsection 12.-(1) & Clause 16.-(1)(a)

- 2. Inspection by a Building Official to determine whether the building is unsafe.
- a) a building other than a room or place actually used as a dwelling.
 The occupier needs to know the identity of the Building Official and the Official's right of entry, without a warrant, at any reasonable time to determine whether the building is unsafe

BCA Reference: BCA Clause 15.9-(1)(a)

b) a building or room or place actually used as a dwelling; there are three possibilities. The Building Official needs the informed and voluntary consent of the occupier or a warrant or the delay necessary to obtain a warrant or the consent of the would result in an immediate danger to the health or safety of any person

BCA References: Subsection 15.9-(1) and Clause 16.-(1)(a), (a.1) or (b)

Exercise # 2

- Entry to remove a building and restore the site upon default of a conditional permit agreement under Clause 8.-(3)(c), involving:
 - a) a building other than a room or place actually used as a dwelling.
 They may enter upon the land and into the building governed by the agreement at any reasonable time without a warrant

BCA Reference: Subsection 8.-(6)

- b) a building or room or place actually used as a dwelling:
- (i) with the consent of the occupier.

Right of entry with the informed and voluntary consent of the occupier

BCA References: Subsection 8.-(6) & Clause 16.-(1)(a)

(ii) without the consent of the occupier nor a warrant.

Right of entry, without a warrant, if a notice of the intention to enter has been served on the occupier, within a reasonable time before entry is made

BCA References: Subsection 8.-(6), Clause 16.-(1)(d) and Subsection 16.-(2)

- When the Order to Remedy an Unsafe Building has not been complied with, entry to renovate, repair or demolish the building or part thereof to remove the unsafe condition or take whatever action is required to protect the public at:
 - a) a building other than a room or place actually used as a dwelling. They may enter upon the land and into the building governed by Order to remedy an Unsafe Building that has not been complied with at any reasonable time without a warrant

BCA Reference: Subsection 15.9-(7)

- b) a building or room or place actually used as a dwelling;
 - (i) with the consent of the occupier.

Right of entry with the informed and voluntary consent of the occupier

BCA Reference: Clause 16.-(1)(a)

(ii) without the consent of the occupier nor a warrant.

Right of entry, without a warrant nor a warrant, if a notice of the intention to enter has been served on the occupier, within a reasonable time before entry is made

BCA References: Subsection 15.9-(7), Clause 16.-(1)(d) and Subsection 16.-(2)

- After an Emergency Order is made by the CBO and posted, entry to take measures to terminate an immediate danger to the health or safety of any person, at:
 - a) a building other than a room or place actually used as a dwelling.
 To terminate the immediate danger, Building Officials and agents (contractors) have a right of entry, at any time, without a warrant nor the consent of the occupier.

BCA Reference: Subsection 15.10-(3)

b) a building, room or place actually used as a dwelling. To terminate the immediate danger, Building Officials and agents (contractors) have a right of entry, at any time, without a warrant nor the consent of the occupier.

BCA References: Subsection 15.10-(3) & Clause 16.-(1)(c) Note Subsection 16.-(1) does not say despite Section 15.10

Exercise #3

 Would you apply for a warrant for the initial entry into building, room or place actually being used as a dwelling, to determine if it is unsafe?

No. A warrant to enter and search can never be applied for in this situation. It is not an offence against the BCA to own or use a building that is unsafe as defined in Subsection 15.9-(2) of the BCA. This situation fails to establish reasonable grounds to believe that an offence against the BCA has been committed

BCA Reference: Clause 21.-(1)(a)

 In dealing with a situation where a building or change-of-use permit has not been applied for nor issued, identify the primary reason that a Building Official would apply for a warrant under Section 21 of the BCA.

To obtain evidence for the offence of construction or changing the use of a building without a permit.

BCA References: Subsections 8.-(1) and 10.-(1)

Does the BCA authority for a warrant include the provision to seize evidence during the search?
 Yes. A warrant to enter and search may authorize the seizure of anything where there is reasonable grounds to believe it will afford evidence relevant to the commission of the offence

BCA Reference: Subsection 21.-(2)

4. According to the BCA, what constitutes a reasonable time to execute a warrant? A warrant to enter and search can only be executed between 6 a.m. and 9 p.m. unless it provides otherwise

BCA Reference: Subsection 21.-(5)

- 5. The Form to apply for a warrant to enter and search under Section 21 of the BCA is:
 - c) Form 1.4.1.A. of Division C

OBC Reference: Division C, Sentence 1.4.1.1.(1)

MODULE SEVEN - THE INSPECTION AND COMPLIANCE PROCESS

Exercise # 1

- The notices of readiness for inspection referenced in Subsection 10.2-(1) of the BCA, to request a
 prescribed inspection for each stage of construction, are included in Article:
 - c) 1.3.5.1. of Division C
- Consider the construction of a house with an on-site sewage system. Make a list of the <u>prescribed notices</u> of each stage of construction requiring a notice of inspection. The person to whom the Building Permit is issued is required to notify the CBO or the RCA, having jurisdiction, of the:
 - 1. the readiness to construct footings
 - 2. substantial completion of footings and foundations prior to the commencement of backfilling
 - substantial completion of structural framing and ductwork and piping for heating and airconditioning systems
 - 4. substantial completion of insulation, vapour and air barriers
 - 5. readiness for inspection and testing of:
 - (a) building sewers and drains
 - (b) water service pipes
 - (c) drainage and venting systems
 - (d) the water distribution system, and
 - (e) plumbing fixtures and appliances
 - 6. readiness to construct the sewage system
 - substantial completion of the installation of the sewage system before the commencement of backfilling
 - completion of construction and installation of components required to permit occupancy under Sentence 1.3.3.2.(1) of Division C, if the building to be occupied is not fully completed

OBC References: Div. C, Clauses 1.3.5.1.(2)(a), (b), (c), (e), (h), (k), (l) and (n)

- After the holder of the Building Permit has notified the CBO or the RCA, having jurisdiction, of the substantial completion of structural framing, the inspection must be undertaken not later than:
 - a) two days after the receipt of the notice

OBC Reference: Div. C, Sentence 1.3.5.3.(1)

- 4. After the holder of the Building Permit has notified the CBO or the RCA, having jurisdiction, of the substantial completion of the installation of the on-site sewage system, the inspection must be undertaken not later than:
 - d) five days after the receipt of the notice

OBC Reference: Div. C. Sentence 1.3.5.3.(2)

Exercise #3

- On Friday the 13th, the holder of the Building Permit notified the CBO or the RCA, having jurisdiction, of the substantial completion of footings and foundations prior to the commencement of backfilling. Accordingly, the inspection must be performed before the end of the workday on
 - b) Tuesday the 17th

OBC References: Div. C, Sentences 1.3.5.3.(4) and (5)

- 2. The use of the Order Requiring Tests and Samples is limited to Clause 18.-(1)(f) of the BCA. In you own words, explain how the Inspector having jurisdiction would proceed to require the production of documents or things, including drawings or specifications, that may be relevant to the building or any part thereof under Clause 18.-(1)(a) or information from any person concerning a matter related to a building or part thereof under Clause 18.-(1)(c).
 - The process is neither stated in the BCA nor prescribed in the OBC. The person* having jurisdiction could verbally request the information. When the verbal request fails to obtain the desired results, the person* having jurisdiction could send a written request in the form of a letter or inspection report to the person in possession of the documents or the information, as the case may be.
- 3. According to Clause 18.-(1)(a) and paragraph 4. of Subsection 15.17-(3) of the BCA, could the person having jurisdiction require a permit holder to prepare new drawings that are deemed to be relevant to the building, during inspection, but did not form part of the application for a permit?
 No. The phrase "require the production of ...drawings" does not mean that the person having jurisdiction can order new drawings to be created; the phrase means that the person having jurisdiction can order drawings to be shown or for inspection. That is to say, the information must first exist for it to be produced.

This would not prohibit the person having jurisdiction from requiring information arising from **tests** or specifications about materials, systems or building designs used during construction (e.g. if there were doubts about the appropriateness of the concrete used in a foundation; details could be requested about the water/cement ratio, slump, air entrainment, etc...)

- Identify two instances that would permit the person having jurisdiction to be accompanied by an expert who is not ordinarily associated with a Principal Authority or RCA.
 - a) The person having jurisdiction may be accompanied by a person who has special or expert knowledge in relation to a building or part thereof.
 - BCA References: Clause 18.-(1)(d), by way of paragraph 4. of Subsection 15.17-(3) for RCA and Subsection 22.-(2) for CBO
 - b) The person having jurisdiction may be accompanied by a person possessing special or expert knowledge to make examinations or to take tests, samples or photographs necessary for the purposes of the inspection.
 - BCA References: Clause 18.-(1)(e), by way of paragraph 4, of Subsection 15.17-(3) for RCA and Subsection 22.-(2) for CBO
- 5. Identify the procedure that must be followed if the person having jurisdiction decides to:
 - a) remove a document or thing relevant to the building or part thereof to make copies or extracts thereof under Clause 18.-(1)(b);

The person having jurisdiction must provide a receipt for any document or thing removed and shall promptly return them after the copies or extracts are made

BCA Reference: Subsection 18.-(4)

- b) take a sample (two scenarios) under Clause 18.-(1)(e);
 - i) The person having jurisdiction must divide the sample taken into two parts and deliver one part to the person from whom the sample was taken, if the person so requests at the time the sample is taken and provides the necessary facilities.

BCA References: Subsection 18.-(2) by way of paragraph 4. of Subsection 15.17-(3) for RCA and Subsection 22.-(2) for CBO

ii) When the person having jurisdiction takes a sample and has not divided the sample into two parts, a copy of any report on the sample must be given to the person from whom the sample was taken.

BCA References: Subsection18.-(3) by way of paragraph 4. of Subsection 15.17-(3) for RCA and Subsection 22.-(2) for CBO

- 6. According to the BCA, an order under the BCA must be served;
 - c) in person or by registered mail

BCA Reference: Subsection 27.-(1)

- According to the BCA, when an Order to Comply is served by registered mail, it must be sent to the last known address of the:
 - c) contravener or that person's agent

BCA References: Subsections 12.-(3) & 27.-(1)

- As soon as possible after making and serving a SWO, the RCA or person who has the qualifications set out in Div. C, Clause 3.4.3.2.(1)(a) and identified in Clause 3.4.3.3.(3)(f) must give to the CBO, a signed report as required Div. C, Subsection 3.7.7. The signed report must contain:
 - a copy of the Order to Comply, Order Not to Cover or Order to Uncover, as the case may be and a copy of the Stop Work Order
 - 2. the names of the persons to whom the orders were served and date and manner of service
 - 3. a statement that the orders have not been complied with, and
 - 4. such other information as may be required by the CBO

OBC References: Div. C, Clauses 3.7.7.1.(1)(a) and (b)

9. An Inspector has made and served an Order to Comply. While discussing the matter with the Manager of Inspectors, they conclude that a wrong OBC reference was written in the OTC. What should the Inspector do?

The Inspector should ask the CBO to review and amend the OTC

BCA Reference: Subsection 22.-(1)

Exercise # 4

- 1. a) A building that is not a sewage system is unsafe if the building is:
 - 1. structurally inadequate
 - 2. faulty for the purpose for which it is used, or
 - 3. in a condition that could be hazardous to the health or safety of persons:
 - in the normal use of the building
 - outside the building, or
 - whose access to the buildings has not been reasonably prevented

BCA References: Clauses 15.9-(2)(a) and (b)

- b) A sewage system is unsafe if it is:
- 1. NOT maintained, or
- NOT operated in accordance with the BCA and the OBC

BCA Reference: Subsection 15.9-(3)

- According to the BCA, the OTRUB must be served to the owner, each person apparently in possession of the building and such other persons affected thereby. The determination of "such other persons affected thereby" is to be made by the:
 - c) Chief Building Official

BCA Reference: Subsection 15.9-(5)

- 3. According to the BCA, the authority to make an Emergency Order lies with;
 - d) the CBO who discovered or to whom the immediate danger was reported

BCA Reference: Subsection 15.10-(1)

4. A CBO is empowered by the BCA to make an EO when;

a) a building poses an immediate danger to the health or safety of any person

BCA Reference: Subsection 15.10-(1)

MODULE EIGHT- THE OCCUPANCY PROCESS

Exercise #1

According to the wording in the OBC, who may permit the occupancy of an unfinished building after an
occupancy permit has been issued by the CBO or his/her designate?

d) a person

OBC Reference: Div. C, Sentence 1.3.3.1.(1)

- 2. After the Inspector having jurisdiction has carried out the inspection referenced in Div. C, Clause 1.3.5.1.(2)(n) and concluded that the building of residential occupancy described in Subclauses 1.3.3.2.(1)(a)(i) to (iv) complies with the requirements of Clauses 1.3.3.2.(1)(b), (c) and (d), who may permit the occupancy of such unfinished building?
 - a) a person

OBC Reference: Div. C, Sentence 1.3.3.2.(1)

- 4. Which of the following describes an unfinished Part 9 building of residential occupancy which may be occupied under Div. C, Article 1.3.3.2.?
 - a) the middle unit of a 2 storey townhouse building with 5 units

OBC References: Div. C, Subclauses 1.3.3.2.(1)(a)(i) to (iv)

- Which of the following describes an unfinished Part 9 residential building which may <u>NOT</u> be occupied under Div. C, Article 1.3.3.2.?
 - a) a 3 storey apartment building with two dwelling units per floor where each unit has a separate exit OBC Reference: Div. C, Subclause 1.3.3.2.(1)(a)(ii)
- 6. Where a building has been occupied prior to its completion, under the provisions of Div. C, Subsection 1.3.3. Forthwith upon the completion of the building, the person who has permitted the building to be occupied must notify the:
 - b) CBO

OBC Reference: Div C, Sentence 1.3.3.3.(1)

Exercise # 2

 Consider the conditions and requirements dealing with the occupancy of a newly completed building and in the space provided insert the appropriate BCA references.

Conditions / requirements to be fulfilled for the occupancy of a newly completed building		
requirements as set out in the BCA must be satisfied prior to permitting the occupancy of the building	11(1)	
notice of the date of completion of the building must be given to the CBO or the RCA having jurisdiction	11(2)	
if an RCA has been performing the inspections through an appointment under Section 4.1 of the BCA, the RCA must issue a Final Certificate containing the information prescribed in the OBC	11(3)	
if the inspections have been carried out by the Principal Authority, the building MUST be inspected, or 10 days must lapse from the date of the notification before the building can be occupied	11(4)(a)	
if the inspections have been carried out by the Principal Authority, ALL orders under Section 12 of the BCA must be complied with before the occupancy of the building can occur	11(4)(b)	

2. When the Building Officials of a Principal Authority are responsible for the inspections, the occupancy of a newly constructed building cannot occur if an Order to Comply, under Section 12 of the BCA, has not been complied with. When an RCA is responsible for the inspections, explain the principal condition that must exist before a Final Certificate is issued.

Before an RCA or a Person authorized by an RCA, with the qualifications set out in Div. C, Clause 3.4.3.2.(1)(a) may issue a Final Certificate, he/she must have reasonable grounds to be believe that on the date on which the Final Certificate is issued, the construction of the building to which the Final Certificate relates complies with the OBC

OBC Reference: Div. C, Clause 3.7.4.3.(6)(c)

MODULE NINE - CO-OPERATION, CONFLICT AND DISPUTE RESOLUTION UNDER THE BUILDING CODE ACT

Exercise #1

- Denial of access to a room or place actually used as a dwelling, to a person having jurisdiction, in the
 exercise of a power or duty under the BCA, would create the offence of hindering or obstructing when:
 - a) the person having jurisdiction is acting under a warrant,

BCA references: Subsection 19.-(2) & Clauses 16.-(1)(a),36.-(1)(b) and (c)

OR

b) the delay necessary to obtain a warrant or the consent of the occupier would result in an immediate danger to the health or safety of any person,

BCA references: Subsection 19.-(2) & Clauses 16.-(1)(b), 36.-(1)(b) and (c)

OR

 entry is necessary to terminate an immediate danger after an Emergency Order is made and posted,

BCA references: Subsection 19.-(2) and Clauses 16.-(1)(c), 36.-(1)(b) and (c)

OR

d) the notice under Subsection 16.-(2) was served on the occupier and entry is required to remove a building or restore the site of a failed conditional permit agreement or to renovate, repair or demolish an unsafe building or take whatever action necessary for the protection of the public when the Order to Remedy an Unsafe Building was not complied with.

BCA References: Subsection 19.-(2) & Clauses 16.-(1)(b), 36.-(1)(b) and (c)

- In the exercise of a power or duty under the BCA by a person having jurisdiction, the following four actions create the offence of hindrance or obstruction:
 - 1. failure to assist an entry, inspection, examination, testing or inquiry by a person having jurisdiction

BCA References: Subsection 19.-(3) and Clauses 36.-(1)(b) and (c)

OR

failure to produce documents, drawings, specifications or things requested by a person having jurisdiction under the authority of Clause 18.-(1)(a)

BCA References: Clause 19.-(4)(a) and Clauses 36.-(1)(b) and (c)

OR

 failure to provide information related to a building or part thereof as requested by a person having jurisdiction under the authority of Clause 18.-(1)(c)

BCA References: Clause 19.-(4)(b) and Clauses 36.-(1)(b) and (c)

OR

4. hiding or removing a posted order without the authorization of a person having jurisdiction

BCA References: Section 20 & Clauses 36.-(1)(b) & (c)

Exercise # 2

Fill in the blanks within the matrix on the next page.

	DIS	PUTE RESOL	UTION MATE	RIX	
	CONDITION	PERSONS HAVING AUTHORITY TO INITIATE PROCESS	PERSONS AFFECTED	RESOLUTION	BCA Reference
-	referral of drawings	CBO, RCA	Designer	PEO, OAA	8(9)
,	referral of drawings	PEO, OAA	Designer and CBO	PEO, OAA	8(9.1)
	review/amend/rescind an inspector's order	Recipient of Order and Inspector	Inspector	СВО	22(1)
-	amend or rescind a SWO and any order made by an RCA in respect of the matter	RCA	RCA and Recipient of Orders	СВО	14(8)
	authority to decide on a dispute concerning the sufficiency of compliance with a technical requirement of the OBC filed under Subsection 24(1.1)	Permit Applicant, Permit Holder, or Person to whom order is given, CBO, Inspector or RCA 24(1.1)	Permit Applicant, Permit Holder Person to whom an order is given, CBO, Inspector or RCA	BCC see Notes 1. and 3.	24(1)(a) & 24(3)
-	authority to decide if permit was issued in prescribed time and whether the reasons were given when the permit is refused	Permit Applicant or Permit Holder	Permit Applicant, Permit Holder and CBO	BCC see Notes 2. and 3.	24(1)(b) & 24 (3.1)
-	authority to determine whether prescribed inspections were done in prescribed time	Permit Holder	CBO, Inspector, or RCA	BCC see Notes 2. and 3.	24(1)(c) & 24 (3.1)

NOTES:

- The BCC may substitute its opinion for that of the CBO, Inspector or RCA [Subsection 24.-(3)]
- The BCC may require the CBO, Inspector or RCA to comply with specific parts of the BCA [Subsection 24.-(3.1)]
- 3. The decision of the BCC is final [Subsection 24.-(4)].

- A person who wishes to appeal a decision made by a person having jurisdiction to the Superior Court of Justice must do so within;
 - a) 20 days after the decision has been rendered

BCA Reference: Subsection 25.-(1)

- Under the BCA, the <u>only</u> issue which is <u>NOT</u> subject to appeal to the Ontario Superior Court of Justice, is the decision of the Chief Building Official to;
 - b) refuse to issue a Conditional Permit

BCA Reference: Subsection 25.-(1)

- 4. The decision made by the Superior Court of Justice is subject to an appeal to the;
 - d) Divisional Court

BCA Reference: Subsection 26.-(1)

- 5. Under the BCA, who may apply to the Superior Court of Justice for a "Restraining Order" directing a person to comply?
 - a) the Chief Building Official

BCA Reference: Subsection 38.-(1).

- 6. A "Restraining Order" made by a Justice of the Ontario Superior Court of Justice is;
 - c) subject to an appeal to the Divisional Court

BCA Reference: Subsection 38.-(3)

MODULE TEN - OFFENCES. LIABILITY AND IMMUNITY FROM ACTIONS

Exercise # 1

- 1. According to the Building Code Act which of the following persons does NOT enjoy immunity from action for any act done in good faith in the execution or intended execution of any power or duty under the Act?
 - d) Designer, Owner or Contractor

BCA Reference: Subsection 31.-(1)

- Where a tort is committed and a municipality had reasonably relied on a certificate issued or other information given by a properly appointed Registered Code Agency, the
 - b) Municipality is NOT liable

BCA Reference: Subsection 31.-(4)

- The following is responsible for damages caused by the action of a RCA or Person authorized by the RCA in the performance of any function set out in Section 15.15 of the BCA;
 - d) Registered Code Agency

BCA Reference: Subsection 31.-(3)

- 4. Notwithstanding Subsection 31.-(1) of the Building Code Act, where a Chief Building Official or an Inspector acted in good faith in the execution of a power or duty but someone suffered an injury, in a law-suit the following could be held liable.
 - a) municipality

BCA Reference: Subsection 31.-(2)

- For the work done in the reasonable exercise of the powers of the Chief Building Official under an Emergency Order, the liability for damages lies with the;
 - c) owner or occupant

BCA Reference: Subsection 15.10-(4)

- 1. A person is guilty of an offence if the person;
 - a) knowingly provides false information

BCA Reference: Clause 36.-(1)(a)

- 2. A corporation building a high rise office building is guilty of an offence under the Building Code Act if it;
 - a) contravenes the Building Code Act

BCA Reference: Clause 36.-(1)(c)

- Consult R. v. Pickles. The Building Code Act period within which proceedings, under the Provincial Offences Act, must be started, for the offence of constructing a building without a permit or causing a building to be constructed without a permit contrary to Subsection 8.-(1) of the BCA is;
 - b) not more than 1 year after completion of the work

BCA Reference: Subsection 36.-(8)

Exercise #3

- Construction Company Limited failed to comply with an Order to Comply and a guilty conviction was determined in court. As this was the first conviction, the corporation may be fined;
 - c) \$100,000 max.

BCA Reference: Subsection 36.-(4)

- The Construction Company Limited was issued another Order to Comply for the same infraction and once again a guilty conviction was determined in court. It may be fined;
 - c) \$200,000 max.

BCA Reference: Subsection 36.-(4)

- The CBO was exasperated and issued a Stop Work Order to Construction Company Limited, which ignored the SWO. In addition to the previous penalties identified in 1 and 2 above, the corporation is now subject to:
 - d) \$10,000 max. / day the offence continues + a Restraining Order

BCA References: Subsections 36.-(5), (6) and (7)

- 4. A person is building an addition to his/her house and is issued an Order to Comply. The person fails to comply and is subsequently convicted in court. This is this person's first offence. This individual may be fined;
 - b) \$50,000 max.

BCA Reference: Subsection 36.-(3)

- The same homeowner is again given another Order to Comply for a different matter and a guilty conviction is determined in court. Under Section 36 of the BCA, this person is subject to:
 - d) \$100,000 max, fine + a Restraining Order

BCA References: Subsections 36.-(3) and (7)

MODULE ELEVEN - CHANGE OF USE AND RENOVATIONS

Exercise # 1

You are asked to fill in the appropriate information in the following chart.

	CONDITION	REQUIRED	F USE PERMIT UNDER S. 10 HE BCA? NO	DIV. C REFERENCE	
1	A restaurant major occupancy (A-2) changes to a residential occupancy (C)	1		Table 1.3.1.4. 1.3.1.4.(1)(a)	
2	A residential occupancy (C) is changed to a mercantile (E) occupancy	1		Table 1.3.1.4. 1.3.1.4.(1)(a)	
3	An office occupancy (D) is changed to a low hazard industrial occupancy (F-3)		1	Table 1.3.1.4. 1.3.1.4.(1)(a)	
4	A mercantile occupancy (E) is changed to an office occupancy (D)	1		Table 1.3.1.4. 1.3.1.4.(1)(a)	
5	A medium hazard industrial occupancy (F-2) is changed to a low hazard industrial occupancy (F-3)		1	Table 1.3.1.4. 1.3.1.4.(1)(a)	
6	A residential suite is converted into two suites of residential occupancy	1		1.3.1.4.(1)(b)	
7	A farm building is being changed into a factory (F-2)	1		1.3.1.4.(1)(d)	
8	An occupancy is being proposed but the previous occupancy is not known	1		1.3.1.4.(1)(f)	
9	A mercantile occupancy (E) is being converted to an office (D) but construction is proposed.		1	1.3.1.4.(2)	
10	A roads garage (F-2) is being converted into an ambulance garage(F-2)	1		1.3.1.4.(1)(e)	

Exercise # 2
Consult Div. B, Sentences 10.3.2.2.(1) to (5) and complete the following Table.

	CONDITION	REDUCTION IN PERFORMANCE UNDER ARTICLE 10.3.2.2 OF Div. B?		DIV. B REFERENCE	
		YES	NO		
1	The New Hazard Index is greater than the existing Hazard Index but less than the Construction Index of the building.		/	10.3.2.2.(5)	
2	Early Warning/Evac. requirements for new occupancy do not comply with Div. B, Table 10.3.2.2.A.	1		10.3.2.2.(3)	
3	The new live load is less than the existing live load.		/	10.3.2.2.(1)	
4	The new major occupancy has a higher Hazard Index than the original area.	1		10.3.2.2.(4)	
5	The new live load is greater than the area was designed for but the maximum live load is posted.		/	10.3.2.2.(2)	

Exercise # 3
Consult Div. B, Sentences 10.3.2.2.(7) to (11) and complete the following Table.

	CONDITION	REDUCTION IN PERFORMANCE UNDER PART 10 OF DIV. B? YES NO		DIV. B REFERENCE	
1	A new mercantile occupancy [Group E] is to be located adjacent to a restaurant [Group A-2]. There is a 45 minute fire separation between the occupancies. [Div. B, Table 3.1.3.1 requires a fire separation with 2 h of fire-resistance rating and C.A. of Table 10.3.2.2.B. would allow 1.5 h or 1 h in sprinklered buildings.]	/		10.3.2.2.(9) and Table 10.3.2.2.B	
2	A 5 storey high sprinklered office building [Group D] is changed into an apartment building [Group C].		1	10.3.2.2.(8)	
3	New construction would require a 1h fire separation between major occupancies but 30 min is provided and the building is not sprinklered.	1		10.3.2.2.(9) and Table 10.3.2.2.B.	
4	A building of combustible construction will be converted to a residential occupancy [Group C] and if this was new construction it would be required to be of noncombustible construction.	1		10.3.2.2.(7)	
5	The new total daily design sanitary sewage flow can be accommodated by the existing plumbing system but not by the components of the on-site sewage system.	1		10.3.2.2.(11)(a)	
6	The type or amount of sanitary sewage to be generated by the new occupancy is prohibited in Div. B, Article 8.1.3.1.	1		10.3.2.2.(11)(b)	

Consult Div. B, Sentence 11.2.1.1.(1) and Table 11.2.1.1.A, and determine the Construction Index (C.I.) of the following buildings.

	Construction Details and Fire-Resistance Ratings of Floor and Roof Assemblies	Construction Index
1	Building 6 storeys in height and noncombustible construction floor over basement - 45 min. fire-resistance rating, other floors - 0 fire-resistance rating, roof - 0 fire-resistance rating.	4
2	Building 10 storeys in height and noncombustible construction floor over basement - 45 min. fire separation, other floors - 45 min fire separations, roof - 45 min fire-resistance rating.	5
3	Building 3 storeys in height and noncombustible construction no basement, other floors - 45 min fire separations, roof - 45 min fire-resistance rating.	5
4	Building 3 storeys in height and combustible construction no basement, other floors - 45 min fire separations, roof - 45 min fire-resistance rating.	5
5	Building 8 storeys in height and noncombustible construction no basement, other floors - 0 min fire separations, roof - 0 min fire-resistance rating.	4
6	Building 2 storeys in height and combustible construction floor over basement - 0 min. fire separation, other floors - 45 min fire separations, roof - 0 min fire-resistance rating.	2

Exercise # 5

Consider Division B, Clause 11.2.1.1.(1)(b), Sentence 11.2.1.1.(2) and Tables 11.2.1.1.B. to 11.2.1.1.N. and establish the Hazard Index (H.I.) for each occupancy condition described. Assume that the building complies with the code for fire-fighting access.

	Occupancy Condition	Occupancy Classification see Div. B Table 3.1.2.1.	Use Div. B, H. I. Table	Building Size and initial H.I.	H. I. Credit of 1 yes/no why?	Final Hazard Index
1	a restaurant, 1 storey in building height 850 m ² in building area, building faces 2 streets.	Group A Division 2	11.2.1.1.C.	Large H.I. of 6	no*	6
2	a residential apartment building, 5 storeys in building height, 1500 m ² in building area, building faces 3 streets.	Group C	11.2.1.1.1.	Medium H.I. of 4	no**	4
3	an office for Medical Examinations, 3 storeys in building height, 1500 m ² in building area, building faces 2 streets.	Group D	11.2.1.1.J.	Medium H. I. of 4	yes Div. B 11.2.1.1.(2)	3
4	a shopping mall, 3 storey in building height building is sprinklered, 2000 m ² in building area, building faces 3 streets.	Group E	11.2.1.1.K.	Large H. I. of 7	no*	7
5	a flour mill, 1 storey building, 200 m ² in building area, facing 4 street.	Group F Division 1	11.2.1.1.L.	Small H. I. of 3	no**	3
6	an aircraft hanger, 1 storey building, 700 m ² in building area, facing 3 streets.	Group F Division 2	11.2.1.1.M.	Medium H. I. of 5	yes Div. B 11.2.1.1.(2)	4

^{*} H.I. credit of 1 from Sentence 11.2.1.1.(2) does not apply to large buildings

^{**} H.I. credit of 1 does not apply to this occupancy classification, Div. B, Clause 11.2.1.1.(2)(a)

Consult Div. B, Subsection 11.4.2. and complete the following Table. For each condition stated, determine if there will be a reduction in the performance level of the building. Support your answer with an OBC reference.

	Condition		tion in nce level?	Div. B reference	
		yes	no		
1	construction will result in a change of major occupancy with a greater H. I. than that of the previous occupancy	1		11.4.2.3.(1)(a)	
2	the structural system can accommodate the proposed construction and change in major occupancy		1	11.4.2.1.(1)(a)	
3	construction will result in an additional bathroom in a dwelling unit with an on-site sewage system where the components of the existing sewage system can accommodate the new total daily design sanitary sewage flow		/	11.4.2.5.(3)(c)	
4	construction will result in an additional bathroom in a dwelling unit with an on-site sewage system where the components of the existing sewage system cannot accommodate the new total daily design sanitary sewage flow	1		11.4.2.5.(3)(c)	
5	construction will cause an occupant load increase less than 15% but the new occupant load will be more than 15% greater than the occupant load requiring a fire alarm system	1		11.4.2.2.(2)	
6	construction will result in an occupancy which will produce a type or quantity of sanitary sewage which is not permitted under Article 8.1.3.1. of Division B	1		11.4.2.5.(4)(b)	
7	construction will cause a change of major occupancy and the existing structural system is not adequate for the new occupancy	1		11.4.2.1.(1)(a)	

Exercise # 7

- A new occupancy has a H.I. of 4 while the existing occupancy had a H.I. of 3 and a C.I. of 3. Identify
 the analysis that must be performed in relation to the early warning and evacuation systems.
 Because the H.I. of the new occupancy is greater than the H.I. of the existing building, evaluate the
 early warning and evacuation system in accordance with the Row with Note (3) of Table 11.4.3.3.
- For the situation in Question # 1, what Additional Upgrading is required by Table 11.4.3.4.A.?
 For a new H.I. of 4 and a C.I. of 3, Table 11.4.3.4.A. requires compliance with Table 11.2.1.1.A. for C.I. of 4, or as a Part 11 Alternative Compliance, provide sprinklers in locations where floor/roof assemblies do not comply with Table 11.2.1.1.A.
- 3. A new occupancy has a H.I. of 2 while the existing occupancy had a H.I. of 3 and a C.I. of 3. Identify the analysis that must be performed in relation to the early warning and evacuation systems when the OL is increased by more than 15%?
 Because the OL is increased by more than 15%, evaluate the early warning and evacuation system in accordance with the Row with Note (3) of Table 11.4.3.3.
- 4. For the situation in Question # 3, what Additional Upgrading is required by Table 11.4.3.4.A.? For a new H.I. of 2 and a C.I. of 3, Table 11.4.3.4.A. does not require any additional upgrading because the existing building can safely accommodate the new occupancy.

5. A new occupancy has a H.I. of 3 while the previous occupancy had a H.I. of 6 and the existing building has a C.I. of 5. What analysis must be performed in relation to the early warning and evacuation systems?
Because the H.I. of the new occupancy is less than the H.I. of the existing building, evaluate the early

Because the H.I. of the new occupancy is less than the H.I. of the existing building, evaluate the early warning and evacuation system in accordance with the Row with Note (2) of Table 11.4.3.3.

6. For the situation in Question # 5, what Additional Upgrading is required by Table 11.4.3.4.A.?

None because the C.I. of 5 for the new building is higher than the H.I. of 3 for the new occupancy.

MODULE TWELVE - COMPLYING WITH DIVISION B

Exercise # 1

- 1. Define the following terms.
- a) Acceptable Solution means:

a requirement or a provision stated in Parts 3 to 12 of Division B.

OBC reference: Div. A, Clause 1.4.1.2.(1)(b)

b) Alternative Solution means:

a substitute for an acceptable solution.

OBC reference: Div. A, Clause 1.4.1.2.(1)(b)

c) Functional Statement means:

a function set out in Table 3.2.1.1. of Division A that a building or an element of a building is intended to perform.

OBC reference: Div. A, Clause 1.4.1.2.(1)(b)

d) Objective means:

an objective set out in Table 2.2.1.1. of Division A.

OBC reference: Div. A, Clause 1.4.1.2.(1)(b)

e) Performance Level means:

the level of performance under which all or part of an existing building functions with respect to its building systems.

OBC reference: Div. A, Clause 1.4.1.2.(1)(b)

Exercise # 2

- 1. To comply with the provisions of the Code as directed by Subsection 8.-(11) of the BCA, a Designer:
 - c) may use the acceptable solutions in Division B

OBC reference: Div. A, Clause 1.2.1.1.(1)(a)

- 2. An alternative solution:
 - b) must achieve the level of performance required by the applicable acceptable solution in Division B

OBC reference: Div. A. Clause 1.2.1.1.(1)(b)

- 3. Ontario's 2006 Objective-Based Code has:
 - d) seven categories of objectives

OBC references: Div. A, Sentence 2.2.1.1.(1) and Table 2.2.1.1.

- In obtaining compliance with the technical provisions (acceptable solutions) of Division B, as directed by Subsection 8.-(11) of the BCA, a Designer:
 - a) may use alternative solutions

OBC reference: Div. A, Clause 1.2.1.1.(1)(b)

- 5. A proposal to use an alternative solution must be supported by documentation prescribed:
 - c) Section 2.1 of Division C of the Code

OBC reference: Div. C. Subsection 2.1.1.

Exercise #3

- The linked pairs of objectives and functional statements attributed to the provisions of Part 6 in Division B can be found in:
 - d) Table 6 of Supplementary Standard SA-1

OBC references: Div. A, Clause 1.2.1.1.(1)(b) → SA-1 → Table 6

- 2. List the objectives and functional statements that are linked with the following provisions of Division B.
 - a) Div. B, Sentence 3.3.4.4.(6), "Egress from Dwelling Units" [F05, F10 - OS3.7]
 - b) Div. B, Sentence 3.7.4.14.(1), "Grab Bar Installation" [F20 - OS3.1]
 - Div. B, Sentence 5.2.1.1.(2), "Interior Environmental Loads" [F20 - OS2.1], [F20, F40 - OH1.1] and [F20 - OH1.2, OH1.3]

Exercise # 4

- List the pairs of objectives and functional statements that are linked with the following provisions of Division B.
 - a) Div. B, Sentence 3.3.4.4.(6), "Egress from Dwelling Units" [F05 - OS3.7] and [F10 - OS3.7]
 - b) Div. B, Sentence 3.7.4.14.(1), "Grab Bar Installation" [F20 - OS3.1]
 - c) Div. B, Sentence 5.2.1.1.(2), "Interior Environmental Loads"

[F20 - OS2.1]

[F20 - OH1.1] and [F40 - OH1.1]

[F20 - OH1.2] and [F20 - OH1.3]

Exercise # 5

Identify the applicable Division B provision.

The applicable Division B provision is Clause 6.2.3.8.(7)(a) which states: "Exhaust ducts connected to laundry drying equipment shall be independent of other exhaust ducts ...".

Exercise # 6

- List the pairs of objectives and functional statements that are linked to Clause 6.2.3.8.(7)(a) of Division B. [F81 - OS1.1]
- For Clause 6.2.3.8.(7)(a), state the "area of performance".
 The alternative solution must minimize the risk of malfunction, interference, damage, tampering or misuse of the exhaust system for Safety Fire Safety reasons so that a person in or adjacent to the building will not be exposed to an unacceptable risk of injury due to fire.

Exercise # 7

- Consider the laundry drying equipment exhaust duct and state the quantitative value of the level of performance of Clause 6.2.3.8.(7)(a).
 - Exhaust ducts serving laundry equipment shall be independent of other exhaust ducts so that zero build-up of lint is allowed in other exhaust ducts.

MODULE THIRTEEN -A- POWERS AND DUTIES OF THE CBO

Exercise # 2

1. To what extent can the CBO rely on Building Department Staff to make certain Orders* (discretionary powers) and issue Permits (non-discretionary powers) on his or her behalf under the BCA? The CBO has non-discretionary powers e.g. he must issue a permit when requirements have been satisfied. These powers can be delegated to inspectors who can assess the completeness of the permit application in light of the operational policies established by the CBO and issue the permit.

For discretionary powers: he/she may authorize others to make orders with his/her signature as long as he/she is aware of the circumstances in each case and the decision to exercise the discretion was his/her's (the CBO's). He/she retains the responsibility for the decisions, that cannot be delegated; and, those that can be delegated to Building Department Staff.

2.(a) Authority of CBO to issue or refuse permits under Subsections 8.-(2), 8.-(3) and 10.-(2) of the BCA.

BCA reference for CBO authority	discretionary authority	non-discretionary authority	can be delegated to staff	cannot be delegated to staff
8(2)		V	~	
8(3)	V			V
10(2)		V	V	

(b) Duty of CBO to decide on permit application within the period prescribed in Article 1.3.1.3. of Division C. [BCA Subsection 8.-(2.2)]

BCA/OBC reference for CBO duty	discretionary duty	non-discretionary duty	can be delegated to staff	cannot be delegated to staff
8(2.2) Div. C, 1.3.1.3.		~	~	

(c) Duty of CBO, under Clause 1.3.1.3.(1)(a) of Div. C, to provide all of the reasons, in writing, to the applicant for refusing to issue a building or demolition permit. [BCA Subsection 8.-(2.3)]

BCA/OBC reference for CBO duty	discretionary duty	non-discretionary duty	can be delegated to staff	cannot be delegated to staff
8(2.3) Div. C, 1.3.1.3.(1)(b)		~	~	

(d) Authority of CBO to refer drawings, plans or specifications accompanying applications for permits or the reports arising out of the general review of the construction of a building to the Association of Professional Engineers of Ontario or the Ontario Association of Architects for the purpose of determining if the Professional Engineers Act of the Architects Act, is being contravened.

BCA reference for CBO authority	discretionary authority	non-discretionary authority	can be delegated to staff	cannot be delegated to staff
8(9)	V			V

e) Duty of CBO to forward drawings, plans or specifications accompanying applications for permits or the reports arising out of the general review of the construction of a building to the Association of Professional Engineers of Ontario or the Ontario Association of Architects for the purpose of determining if the Professional Engineers Act of the Architects Act, is being contravened when requested to do so by the respective association.

BCA reference	discretionary	non-discretionary	can be delegated to staff	cannot be
for CBO duty	duty	duty		delegated to staff
8(9.1)		V	~	

f) Authority of CBO to revoke permits under Clauses 8.-(10)(a) to (f).

BCA reference for CBO authority	discretionary authority	non-discretionary authority	can be delegated to staff	cannot be delegated to staff
8(10) (a) to (f)	~			V

(g) Authority of CBO, under Subsection 8.-(12) of the BCA, to authorize a material change to a plan, specification, document or other information on the basis of which a permit was issued.

BCA reference for CBO authority	discretionary authority	non-discretionary authority	can be delegated to staff	cannot be delegated to staff
8(12)		V	V	

(h) Duty of CBO, under Subsection 8.-(14) of the BCA, to accept a request to authorize a material change to a plan, specification, document or other information on the basis of which a permit was issued when the request is accompanied by the Change Certificate of the appointed RCA and contains the information prescribed in Sentences 3.7.4.3.(1), (2), (4) and (7) of Division C.

BCA/OBC reference for CBO duty	discretionary duty	non-discretionary duty	can be delegated to staff	cannot be delegated to staff
8(14) Div. C, 3.7.4.3.(1), (2), (4), (7)		~	~	

(i) Duty of CBO, under Subsection 14.-(7) of the BCA, to enforce a Stop Work Order and any Order in respect of the matter, that was referred to him/her by the RCA in the manner described in Subsection 3.7.7. of Division C.

BCA/OBC reference for CBO duty	discretionary duty	non-discretionary duty	can be delegated to staff	cannot be delegated to staff
14(7) Div. C, 3.7.7.		~	~	

(j) Authority of CBO, under Subsections 14.-(8) and 22.-(1) of the BCA to review, amend or rescind orders.

BCA reference for CBO authority	discretionary authority	non-discretionary authority	can be delegated to staff	cannot be delegated to staff
14(8) 22(1)	~			~

(k) Authority of CBO to decide on "other recipients" of Order to Remedy Unsafe Building under Subsection 15.9-(5), Order to Prohibit Use or Occupancy of Unsafe Building under Subsection 15.9-(8), Emergency Order and statements of the measures taken to terminate the immediate danger and the costs thereof under Subsections 15.10-(2) and (5) or (6), as the case may be, of the BCA.

BCA reference for CBO authority	discretionary authority	non-discretionary authority	can be delegated to staff	cannot be delegated to staff
15.9-(5) 15.9-(8) 15.10-(2) 15.10-(5) 15.10-(6) 15.21-(5)	~			~

 Authority of CBO, under Clause 15.9-(6)(a) of the BCA, to make an Order to Prohibit the Use or Occupancy of an Unsafe Building that is not in compliance with an Order to Remedy Unsafe Building.

BCA reference for CBO authority	discretionary authority	non-discretionary authority	can be delegated to staff	cannot be delegated to staff
15.9-(6)(a)	V			V

(m) Authority of CBO, under Clause 15.9-(6)(b) of the BCA, to cause an unsafe building that is not in compliance with an Order to Remedy Unsafe Building to be renovated, repaired or demolished to remove the unsafe condition or take such action as he/she considers necessary for the protection of the public.

BCA reference for CBO authority	discretionary authority	non-discretionary authority	can be delegated to staff	cannot be delegated to staff
15.9-(6)(b)	V			V

(n) Authority of CBO to make an Emergency Order under the authority of Subsection 15.10-(1) of the BCA.

BCA reference for CBO authority	discretionary authority	non-discretionary authority	can be delegated to staff	cannot be delegated to staff
15.10-(1)	V			V

(o) Duty of CBO to post Emergency Order.

BCA reference	discretionary	non-discretionary	can be delegated to staff	cannot be
for CBO duty	duty	duty		delegated to staff
15.10-(2)		V	~	

(p) After making the Emergency Order and either before or after the Emergency Order is served, the CBO has the authority to take any reasonable measure necessary to terminate the immediate danger.

BCA reference for CBO authority	discretionary authority	non-discretionary authority	can be delegated to staff	cannot be delegated to staff
15.10-(3)	V			V

(q) Duty of CBO, under the authority of Subsection 15.10-(7) of the BCA, to apply to the Ontario Superior Court of Justice for an Order confirming the Emergency Order, as soon as practicable after the statements describing the work done to terminate the immediate danger and providing details of the amount spent in doing so have been posted and served.

BCA reference for CBO duty	discretionary duty	non-discretionary duty	can be delegated to staff	cannot be delegated to staff
15.10-(7)		~	~	

(r) Authority of CBO to make an Order to Suspend all or part of the Construction of the building to which the appointment relates if the CBO has reason to believe that the RCA has ceased to perform the functions specified in the appointment when the appointment of the RCA has not expired or b∈en terminated.

BCA reference for CBO authority	discretionary authority	non-discretionary authority	can be delegated to staff	cannot be delegated to staff
15.21-(1)	V			V

(s) The duty of the CBO to forward to the Director a copy of the notice of the termination of the RCA and such other information as may be required by the Director when the CBO has refused to issue a permit for the specified building or has revoked the permit.

OBC reference for CBO duty	discretionary duty	non-discretionary duty	can be delegated to staff	cannot be delegated to staff
Div. C. 3.7.6.1.(1)		V	~	

(t) The duty of the CBO to forward a copy of the Order To Suspend Construction to the Director along with such other information concerning the circumstances of the OTSC as may be required by the Director.

OBC reference for CBO duty	discretionary duty	non-discretionary duty	can be delegated to staff	cannot be delegated to staff
Div. C. 3.7.6.1.(2)		~	~	

- Under the BCA, the CBO has the authority to refer drawings, plans or specifications accompanying
 applications for permits or reports arising out of the general review of the building to the Association of
 Professional Engineers of Ontario or the Ontario Association of Architects to determine if:
 - (d) the Professional Engineers Act or the Architects Act, as the case may be, is being contravened.

BCA reference: Subsection 8.-(9)

- 4. According to the BCA, a CBO that receives a written request, from the Association of Professional Engineers of Ontario or the Ontario Association of Architects, for a copy of drawings, plans or specifications accompanying an application for a permit or reports arising out of the general review of the building, the CBO:
 - (a) must comply with the request

BCA reference: Subsection 8.-(9.1)

9. An accessory building was converted to a dwelling without a permit. The situation is also contrary to zoning as only one dwelling per lot is permitted. The owner was charged for building without a permit, under Part I of the *Provincial Offences Act*. The owner paid the fine. The CBO wants the illegal use of land terminated and the building restored for its original use or removed. His/her best option is to:
(c) apply to the Superior Court of Justice for a Restraining Order

BCA reference: Subsection 38.-(1)

 For each authority that can be delegated to its CBO or Inspector who has the powers and duties of a CBO, as the case may be, by the Principal Authority, insert the BCA reference for the delegation of authority, the manner of delegation and whether any conditions or restrictions may be imposed on how the delegated authority is to be performed.

Authority of Principal Authority to:	BCA reference for delegation of authority	Manner of delegation (1)	Authority to impose conditions or restrictions on delegation
appoint a RCA under agreement	4.1-(3)	in writing	yes
administer reciprocal plans review agreements	6(2)	unspecified	unspecified
except for plumbing permits, enter into agreements to issue conditional permits	8(3.1)	in writing	yes

 (a) Under Subsection 4.1-(3) of the BCA, a Principal Authority is empowered to delegate its authority to appoint a RCA under agreement to its CBO. The delegation must be in writing and may impose conditions or restrictions on the CBO in making the appointment.

BCA reference for CBO authority	discretionary authority	non-discretionary authority	can be delegated to staff	cannot be delegated to staff
4.1-(3)	V			V

(b) A Principal Authority is empowered by Subsection 6.-(2) of the BCA to delegate to its CBO the authority to make such decisions, under a reciprocal plans review agreement, as may be necessary for the implementation of the agreement.

BCA reference for CBO authority	discretionary authority	non-discretionary authority	can be delegated to staff	cannot be delegated to staff
6(2)	V			V

(c) A Principal Authority that is a local municipality, upper-tier municipality, board of health or conservation authority is empowered, under Subsection 8.-(3.1) of the BCA to delegate in writing to its CBO, the power to enter into Conditional Permit Agreements under Clause 8.-(3)(c) of the BCA. The written delegation may impose conditions or restrictions.

BCA reference for CBO authority	discretionary authority	non-discretionary authority	can be delegated to staff	cannot be delegated to staff
8(3.1)	V			V

Exercise # 4

- A consideration of Sections 15.19 and 15.20 of the BCA, indicates that the words "expire" and "termination" are synonymous.
 - b) False
- According to the OBC, the consent of the Director of the Building and Development Branch of the Ministry of Municipal Affairs and Housing is required before a Principal Authority can terminate the appointment of a Registered Code Agency that has not performed all of the functions for which it was appointed.
 - b) False

- The authority of a Principal Authority to terminate the appointment of a RCA that has not performed all of the functions for which it was appointed lies with:
 - b) the terms of the agreement under Subsection 4.1-(1)

OBC reference: Div. C, Sentence 3.7.5.1.(1)

- 4. A Registered Code Agency that becomes or expects to become unable to carry out functions for which it was appointed shall as soon as possible give notice to the:
 - d) Chief Building Official and the Director

OBC references: Div. C, Sentences 3.7.6.2.(1) & 3.7.6.3.(1)

Exercise # 5

- 1. The form of the OTSC is prescribed:
 - b) in the Instrument of the Principal Authority enacted under the BCA

BCA references: Clause 7.-(1)(f) and Subsection 7.-(9)

- 2. The OTSC becomes effective from the time it is:
 - d) posted

BCA references: Subsections 15.21-(5) and 14.-(3)

- 3. Under the BCA, the CBO is empowered to make an OTSC if the CBO has reason to believe that:
 - c) the RCA has ceased to perform the functions for which it was appointed

BCA reference: Subsection 15.21-(1)

- 4. After the OTSC has been posted, no person shall perform any work in respect of the construction of the building other than work necessary to:
 - a) secure the safety and security of the building and of the construction site

BCA reference: Subsection 15.21-(4)

- The manner in which the OTSC is served and posted is the same as for the:
 - d) Stop Work Order

BCA references: Subsections 15.21-(5) and 14.-(2) and Section 27

- An OTSC may be served to a person's agent.
 - a) True

BCA reference: Subsection 27.-(1)

MODULE THIRTEEN -C- POWERS AND DUTIES OF THE RCA

Exercise # 2

- A RCA would be in a conflict of interest and could not be appointed nor continue to be appointed if the RCA, an officer, director, partner or employee of the RCA or any person engaged by the RCA to perform functions for it:
 - (a) has participated or participates, in any capacity, in design activities or construction relating to any part of the building to which the appointment relates.
 - (b) is or has been employed within the previous 180 days by a person who carried out design activities or construction relating to any part of the building.
 - (c) has a professional or financial interest in:
 - (i) the construction of the building to which the appointments relates.

or

(ii) the building to which the appointment relates.

or

- (iii) the person responsible for the design of the building to which the appointment relates,
- (d) is an elected official, officer or employee of a principal authority.

OBC references: Div. C, Clauses 3.7.2.1.(4)(a) to (d)

2. In your own words, explain what involvement is not considered to be a professional or financial conflict of interest for the purposes of Clause 3.7.2.1.(4)(c) of Div. C.

Involvement with a building as a RCA and entitlement to any fee paid for acting as a RCA in respect of a building is not considered to be a professional or financial conflict of interest for the purposes of Clause 3.7.2.1.(4)(c) of Division C.

OBC reference: Div. C, Sentence 3.7.2.1.(5)

Exercise #3

- 1. The following are conditions for the registration of a RCA:
 - (a) the RCA shall carry out its activities in accordance with the BCA, OBC and the Quality Management Plan.
 - (b) if the RCA is a corporation or partnership, there must be an officer, director, partner or employee of the RCA who:
 - (i) meets the qualifications set out in Div. C. Clause 3.4.3.2.(1)(a) to sign certificates on behalf of the RCA

and

- (ii) have the qualifications set out in Div. C, Clause 3.4.3.2.(1)(b) to carry out plans review and inspection activities in respect of each Class of Registration found in Table 3.5.2.2. of Division C.
- (c) not more than 180 days after the BDB Director has given a notice under Div. C, Sentence 3.4.3.8.(1) the RCA shall:
 - (i) ensure that the persons with the qualifications set out in Div. C. Clauses 3.4.3.2.(1)(a) and (b) have completed the new examinations referred to in the notice,

and

- (ii) provide the BDB Director with the names of the persons and information about the examinations that the persons have successfully completed, in such details as may be required by the BDB Director.
- (d) during the term of the registration, the RCA must be covered by the insurance required by Subsection 3.6.2. of Division C,
- (e) within 15 days after the event, the RCA must notify the BDB Director in writing of any change in:
 (i) address of the RCA for correspondence relating to the registration,
 - (ii) the information set out in Div. C, Sentences 3.4.3.3.(5) [the names and residence addresses of all partners, directors and officers, when that is the case] and (6) [the names of all partners, directors, or officers, employees and others who have qualifications under Div. C, Clauses 3.4.3.2.(1)(a), (b) and (c) and who will exercise powers and perform functions on behalf of the RCA, when the RCA is a partnership or corporation,
- (f) the RCA shall give prompt written notice to the BDB Director of any material (important and relevant) change in any of the information, other than the information in Div. C, Clause 3.4.3.7.(1)(e) above WHICH IS REQUIRED WITHIN 15 DAYS AFTER THE EVENT, that is contained in or accompanies an application for registration or renewal of a registration,
- (g) the RCA shall at its own expense, give to the BDB Director such documents or information relating to the registration or activities of the RCA as the BDB Director may reasonably require,
- (h) the RCA shall allow the representatives of the BDB Director access to its books and records during normal business hours for the purpose of confirming matters related to the registration.

Exercise # 10

- Clause 3.6.2.3.(1)(a) of Division C requires a RCA to have liability insurance for an extended reporting period after the RCA ceases to be registered. Consequently, with respect to an event that gives rise to a claim, a person may give notice within:
 - (ii) two years after the RCA ceases to be insured

OBC Reference: Div. C, Subclause 3.6.2.3.(1)(c)(i)

3. Clause 3.6.2.3.(1)(a) of Division C requires a RCA to have liability insurance for claims that are first made and reported to the insurer during the period of insurance or during the extended reporting period after the RCA ceases to be insured. The limit of indemnity during any one period of insurance is not less than:

(iii) \$1,000,000 per claim and \$2,000,000 in the aggregate

OBC Reference: Div. C, Subclause 3.6.2.3.(1)(f)(ii)



